

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
MIDDLE DIVISION**

KEITH EDMUND GAVIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. 4:16-cv-00273-KOB
	)	
JEFFERSON S. DUNN,	)	
Commissioner of the Alabama	)	
Department of Corrections,	)	
	)	
Respondent.	)	

**VOLUME 41**

**State Court – Collateral Appeal Transcript  
Supplement**

LUTHER STRANGE  
ALABAMA ATTORNEY GENERAL

AND

BETH JACKSON HUGHES  
ALABAMA ASSISTANT ATTORNEY GENERAL

ADDRESS OF COUNSEL:

Office of the Alabama Attorney General  
Capital Litigation Division  
501 Washington Avenue  
Montgomery, AL 36130  
(334) 242-7392

Supp 1 Vol 1 of 2

COURT OF CRIMINAL APPEALS NO. \_\_\_\_\_ SUPPLEMENT #1 TO CR-10-1313

**APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS**

FROM

CIRCUIT COURT OF \_\_\_\_\_ CHEROKEE COUNTY, ALABAMA

CIRCUIT COURT NO. CC-98-61.60 & CC-98-62.60

CIRCUIT JUDGE David A. Rains

Type of Conviction/ Order Appealed From: Rule 32

Sentence Imposed: \_\_\_\_\_

Defendant Indigent: ☒ YES ☐ NO

**KEITH EDMUND GAVIN**

**NAME OF APPELLANT**

Stephen C. Jackson 205-254-1037

(Appellant's Attorney) (Telephone No.)

1901 Sixth Avenue North, Suite 2400

(Address)

Birmingham, AL 35203

(City) (State) (Zip Code)

**V.**

**STATE OF ALABAMA**

**NAME OF APPELLEE**

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

df

(For Court of Criminal Appeals Use Only)

2  
 ELECTRONIC JUDICIAL  
 11/7/2016 10:17 AM  
 CC-1998-00018160  
 CIRCUIT COURT OF  
 CHEROKEE COUNTY, ALABAMA  
 DWAYNE AMOS, CLERK

IN THE NINTH JUDICIAL CIRCUIT COURT OF ALABAMA  
 CHEROKEE COUNTY CIRCUIT COURT

KEITH GAVIN,	)	
	)	
Petitioner,	)	CC-98-61.60
	)	CC-98-62.60
	)	
v.	)	
	)	
STATE OF ALABAMA,	)	
	)	
Respondent.	)	

MOTION TO SUPPLEMENT THE RECORD

Keith Gavin, through counsel, respectfully notifies this Court, pursuant to Rule 10(g) of the Alabama Rules of Appellate Procedure, that the record in this case, transmitted to the Alabama Court of Criminal Appeals on August 31, 2011 (Case No. CR-10-1313), is incomplete. Mr. Gavin moves that the record be supplemented as follows and certified for appeal.

1. The Alabama Rules of Appellate Procedure provide that the Clerk's Record shall include all papers and documents in the case, and that the Reporter's Transcript contain transcripts of all proceedings in the case designated on the Reporter's Transcript Order. Ala. R. App. P. 10(c).

2. The Record on Appeal in this matter does not contain the transcript of the deposition of Craig Haney, which was transmitted to the trial court on April 15, 2010. See Letter to Judge Rains transmitting Haney deposition, attached hereto as Exhibit A.

3. Pursuant to order of the trial court, the transcript of the deposition of Craig Haney is part of the record on the evidentiary hearing held by the trial court on Mr. Gavin's Rule 32 petition. See January 10, 2010 Order, attached hereto as Exhibit B. See also February 9, 2010 Hrg. Tr. at 589-590, 599-600, excerpts attached hereto as Exhibit C.

5. The failure to provide a complete appellate record prevents Mr. Gavin from appealing the claims in his Second Amended Rule 32 Petition and violates his rights protected by the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the Alabama Constitution, and Alabama law.

FOR THESE REASONS, Mr. Gavin requests that the Court order that the Clerk supplement the record with the above-mentioned transcript of Dr. Craig Haney.

Respectfully submitted,

Stephen C. Jackson  
Maynard Cooper & Gale P.C.  
1901 Sixth Avenue North  
Suite 2400  
Birmingham, Alabama 35203  
Phone: (205) 254-1037  
Fax: (205) 254-1999

/s/ Stephen C. Jackson  
Prentice H. Marshall, Jr.  
Melanie E. Walker  
Caroline L. Schiff  
Sidley Austin LLP  
One South Dearborn Street  
Chicago, IL 60603  
Phone: (312) 853-7000  
Fax: (312) 853-7036  
E-mail: phmarshall@sidley.com

Counsel for Appellant  
Keith Gavin

**CERTIFICATE OF SERVICE**

Stephen Jackson, one of the attorneys for Appellant Keith Gavin, certifies that the attached was served by first-class mail on November 7, 2011, to:

Corey Maze  
Office of the Attorney General  
500 Dexter Avenue  
Montgomery, Alabama 36130  
United States of America

Lane W. Mann  
Clerk of the Court of Criminal Appeals  
Judicial Building  
300 Dexter Avenue  
Montgomery, Alabama 36130-1555

/s/ Stephen C. Jackson  
OF COUNSEL



SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN  
CHICAGO, IL 60603  
(312) 853 7000  
(312) 853 7036 FAX

cschiff@sidley.com  
(312) 853-7759

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CIRCUIT COURT OF  
CHEROKEE COUNTY ALABAMA  
DWAYNE AMOS, CLERK

SHANGHAI  
SINGAPORE  
SYDNEY  
TOKYO  
WASHINGTON, D.C.

April 15, 2010

**By Federal Express**

The Hon. David A. Rains  
Cherokee County Courthouse  
100 Main Street  
Centre, Alabama 35960

Re: Gavin v. State of Alabama, Nos. CC-98-61.60, CC-98-62.60

Dear Judge Rains:

Enclosed is a transcript of the deposition of Dr. Craig A. Haney, taken on March 31, 2010 in the above-referenced case.

Following the deposition, Ms. Casey informed us that she will require an extension of time to file a closing brief, and we agreed, pending your approval, that Petitioner's brief will be filed on or before July 1, 2010, and the state will file its brief on or before September 1, 2010.

Respectfully submitted,

A handwritten signature in cursive script that reads "Caroline L. Schiff".

Caroline L. Schiff

cc: Pamela Casey

Enclosure

7  
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11/07/2011 10:12 AM  
CC-1998-000061.60  
CIRCUIT COURT OF  
CHEROKEE COUNTY, ALABAMA  
DWAYNE AMOS, CLERK

State of Alabama,  
PLAINTIFF

vs.

Keith Edmund Gavin,  
DEFENDANT

\*  
\* IN THE CIRCUIT COURT OF  
\* CHEROKEE COUNTY, ALABAMA  
\* CASE NO. - CC-1998-061.60  
\* CC-1998-062.60  
\*

**ORDER**

The Petitioner seeks leave of the Court to submit the deposition testimony of Dr. Craig Haney at the Rule 32 hearing on February 8-9-10, 2010. The State has objected thereto, and the matter has been submitted on the written argument of the parties. In consideration thereof it is

ORDERED that the deposition of the witness may be used on condition that the State's Attorney is able to be physically present at the deposition at no cost or expense to the State. The Court will not allow the witness to be physically present with one or more of the Petitioner's attorneys while the State's attorney is only able to participate by video conference.

DONE this day, January 12, 2010.

**FILED**

JAN 12 2010

  
David A. Rains, Circuit Judge

  
CIRCUIT CLERK, CHEROKEE COUNTY, AL



**ORDER**

**Cherokee Co. CC-1998-061.60  
CC-1998-062.60**

**Page 2**

**COPY TO:**

**Ms. Pamela L. Casey  
Assistant Attorney General  
Office of Attorney General  
Capital Litigation Division  
Alabama State House  
11 South Union St.  
Montgomery, AL 36130**

**Hon. Mike O'Dell  
Ninth Judicial District Attorney  
Mr. Robert F. Johnston  
Assistant District Attorney**

**Mr. Stephen C. Jackson  
Mr. C. Andrew Kitchen  
MAYNARD, COOPER, AND GALE, P.C.  
2400 AmSouth/Herbert Plaza  
1901 Sixth Ave, N.  
Birmingham, AL 35203**

**Mr. Prentice H. Marshall, Jr.  
Ms. Melanie Walker  
Mr. Matt Lyon  
SIDLEY, AUSTIN, BROWN, AND WOOD, LLP  
One South Dearborn St.  
Chicago, IL 60603**

**Ms. Leigh Frazier  
SIDLEY, AUSTIN, BROWN, AND WOOD, LLP  
1601 K Street, N.W.  
Washington, D.C. 20005**

**Attorney for -**

**Plaintiff - State of Alabama**

**Plaintiff - State of Alabama**

**Defendant - Keith Edmund Gavin**

**Defendant - Keith Edmund Gavin**

**FILED**

**JAN 12 2010**

*Deputy Clerk*  
**CIRCUIT CLERK CHEROKEE COUNTY, AL**

9  
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CIRCUIT COURT OF  
CHEROKEE COUNTY, ALABAMA  
DWAYNE AMOS, CLERK

STATE OF ALABAMA  
IN THE CIRCUIT COURT FOR THE COUNTY OF CHEROKEE  
NINTH JUDICIAL CIRCUIT  
CRIMINAL

STATE OF ALABAMA,

VS.

CASE NO. CC-98-61; CC-98-62

KEITH EDMUND GAVIN,

DEFENDANT

REPORTER'S OFFICIAL TRANSCRIPT

BEFORE:

His Honor David A. Rains, Circuit Judge  
Centre, Alabama  
February 8 and 9, 2010

APPEARANCES:

FOR THE STATE OF ALABAMA:

Pamela Casey, Assistant Attorney General  
Corey Maze, Assistant Attorney General  
Montgomery, Alabama

FOR THE DEFENDANT:

Printice Hank Marshall, Attorney at Law  
Melanie E. Walker, Attorney at Law  
Caroline L. Schiff, Attorney at Law  
Chicago, Illinois

TRINA S. TALLENT  
Official Court Reporter  
Ninth Judicial Circuit  
Ft. Payne, Alabama

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1 Honor.

2 THE COURT: Excellent. That will  
3 be very helpful, thank you.

4 MR. MARSHALL: Thank you, Your  
5 Honor. That's 7, 8 and 9, right?

6 THE COURT: It is, yes, sir.  
7 (Whereupon, Defendant's exhibits 7,  
8 8, 9 admitted into evidence at this time)

9 MR. MARSHALL: We're not prepared  
10 to close our proof because Dr. Haney needs  
11 to be examined.

12 THE COURT: Let's just make sure  
13 we've gotten everything in today that we  
14 want to get in today and then we'll figure  
15 out what we've got to do about getting  
16 Haney's deposition. There was maybe another  
17 matter or two that needed to be dealt with,  
18 but do we have anything else that we need to  
19 do today? Anything else from the State?

20 MR. MAZE: Not from the State, no.

21 MS. CASEY: No.

22 THE COURT: Anything else from the  
23 defendant?

24 MR. MARSHALL: No. And for the  
25 record, we have agreed on a date for Dr.

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1 Haney.

2 MS. CASEY: Yes.

3 THE COURT: What is that?

4 MS. CASEY: March 31st.

5 THE COURT: That's when Haney is  
6 going to be deposed?

7 MS. CASEY: Yes, sir.

8 MR. MARSHALL: In Birmingham, I  
9 believe. Is that the agreement?

10 MS. CASEY: Yes.

11 THE COURT: Okay, and Mr. Webb was  
12 going to provide or maybe you have them, the  
13 interview sheets?

14 MS. WALKER: That's right, Your  
15 Honor, we have one issue there. I believe  
16 back at our offices we have all of Mr.  
17 Webb's interview notes and certainly to the  
18 extent they haven't been provided to counsel  
19 I'm happy to ask Mr. Webb for them. The  
20 only issue there is, as you may recall, I  
21 described how Mr. Webb sort of wore two hats  
22 for us. He performed an investigative role  
23 as sort of our attorney work product, and  
24 then he performed a role as an expert on  
25 police procedures. There are certain of the

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1 about two minutes ago, they are hearsay and  
2 shouldn't come in, so if they're hearsay one  
3 way, then it should work both ways.

4 THE COURT: I'll take that under  
5 consideration. Thank you. Anything else?

6 MR. MARSHALL: Not at this time,  
7 Your Honor, no.

8 THE COURT: Thank you. Now, ones  
9 you have gotten the Haney deposition, I  
10 assume that you want to file something.

11 MR. MARSHALL: Well, I think it  
12 probably behooves all of us to try to  
13 summarize what we think the evidence has  
14 shown and its legal implications. I do.  
15 And then we'd be happy to argue it or to  
16 brief it or if the Court prefers, both. I  
17 know it's a lot of work, but there is a lot  
18 of materials.

19 THE COURT: Well, I'm not going to  
20 ask you to come back and orally argue it. I  
21 think if once you have gotten the Haney  
22 deposition, I think I'm going to give you  
23 one more opportunity to present -- you can  
24 submit the Haney deposition and any argument  
25 that you want, written argument that you

v

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1 want to make, about where you think this  
2 case is and how it ought to be disposed of..

3 MR. MARSHALL: Sure. Right.

4 THE COURT: Call that whatever you  
5 want to call it and then let the State  
6 respond to it. But the Haney deposition  
7 will come to me from the defendant.

8 MR. MARSHALL: Yes, Your Honor, it  
9 will.

10 THE COURT: Okay. But you will  
11 give it to me in its entirety, don't just  
12 give me a page here and a page there and a  
13 page somewhere else.

14 MR. MARSHALL: Well, I suspect if  
15 we're going to write a brief, obviously, we  
16 will talk about selected portions within the  
17 brief, but obviously we'll produce the  
18 entire transcript.

19 THE COURT: Exactly. Fine.

20 MR. MARSHALL: Which I think has  
21 been the practice in this case so far. I  
22 think all of the transcripts have been fully  
23 provided to the Court.

24 MS. CASEY: The State provided  
25 them.

**COURT OF CRIMINAL APPEALS  
STATE OF ALABAMA**

Lane W. Mann  
Clerk  
Garri Robinson  
Assistant Clerk



P. O. Box 301555  
Montgomery, AL 36130-1555  
(334) 229-0751  
Fax (334) 229-0521

November 8, 2011

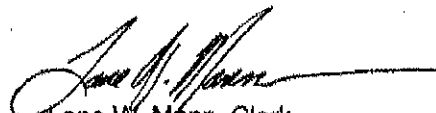
**CR-10-1838**

Randall Shane Barnett v. State of Alabama (Appeal from Cherokee Circuit Court:  
CC09-19)

**Notice**

You are hereby notified that the record on appeal in the above-referenced cause was filed on November 7, 2011. Because the clerk's certificate of completion is dated November 7, 2011, the appellant's brief is due by December 5, 2011. Should the appellant seek an extension of time for filing the brief, the request for an extension must be made in accordance with the Court's policy as set out in the informational notice that was mailed to the appellant when this appeal was docketed. Any questions regarding this notice should be directed to the clerk's office.

**IMPORTANT NOTE:** This notice has no effect on any outstanding deficiencies. If you have received a notice or an order from this Court directing you to correct a deficiency, you must comply with that notice or order within the time directed. Failure to do so may result in the dismissal of your appeal.

  
Lane W. Mann, Clerk  
Court of Criminal Appeals

cc: Hon. F. Dwayne Amos, Circuit Clerk  
Daniel Randolph Phillips, Attorney  
Office of Attorney General

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11/14/2011 3:40 PM  
CC-1998-000061.60  
CIRCUIT COURT OF  
CHEROKEE COUNTY, ALABAMA  
DWAYNE AMOS, CLERK

IN THE CIRCUIT COURT OF CHEROKEE COUNTY, ALABAMA

STATE OF ALABAMA

V.

GAVIN KEITH EDMUND #2-665  
Defendant.

Case No.: CC-1998-000061.60

ORDER

The Defendant's Motion To Supplement Record with the transcript of the deposition of Craig Heney is hereby granted. The Clerk shall supplement the record on appeal accordingly pursuant to Rule 10(g) ARAP.

DONE this 14<sup>th</sup> day of November, 2011.

/s/ DAVID A RAINS  
CIRCUIT JUDGE





SIDLEY AUSTIN LLP  
ONE SOUTH DEARBORN  
CHICAGO, IL 60603  
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April 15, 2010

By Federal Express

The Hon. David A. Rains  
Cherokee County Courthouse  
100 Main Street  
Centre, Alabama 35960

**RECEIVED**

MAY 18 2010

OFFICE OF JUDGE DAVID A. RAINS

Re: Gavin v. State of Alabama, Nos. CC-98-61.60, CC-98-62.60

Dear Judge Rains:

Enclosed is a transcript of the deposition of Dr. Craig A. Haney, taken on March 31, 2010 in the above-referenced case.

Following the deposition, Ms. Casey informed us that she will require an extension of time to file a closing brief, and we agreed, pending your approval, that Petitioner's brief will be filed on or before July 1, 2010, and the state will file its brief on or before September 1, 2010.

Respectfully submitted,

A handwritten signature in cursive script that reads "Caroline L. Schiff".

Caroline L. Schiff

cc: Pamela Casey

Enclosure

1 IN THE NINTH JUDICIAL CIRCUIT COURT

2 OF ALABAMA

3 CHEROKEE COUNTY CIRCUIT COURT

4 KEITH GAVIN, )

5 Petitioner, )

6 )CASE NO:

7 VS. )CC-98-61.60

8 STATE OF ALABAMA, )CC-98-62.60

9 )DEPOSITION OF:

10 Respondent. )CRAIG HANEY

11 S T I P U L A T I O N S

12 IT IS STIPULATED AND AGREED, by and

13 between the parties through their

14 respective counsel, that the deposition

15 of:

16 CRAIG HANEY,

17 may be taken before Dana Gordon,

18 Commissioner and Notary Public, State at

19 Large, at the Law Offices of Maynard,

20 Cooper & Gale, 1901 6th Avenue North, Suite

21 2400, Birmingham, Alabama 35203, on the

22 31st day of March, 2010, commencing at

23 approximately 10:00 a.m.

ORIGINAL

1           IT IS FURTHER STIPULATED AND AGREED  
2   that the signature to and reading of the  
3   deposition by the witness is waived, the  
4   deposition to have the same force and  
5   effect as if full compliance had been had  
6   with all laws and rules of Court relating  
7   to the taking of depositions.

8  
9           IT IS FURTHER STIPULATED AND AGREED  
10   that it shall not be necessary for any  
11   objections to be made by counsel to any  
12   questions, except as to form or leading  
13   questions, and that counsel for the parties  
14   may make objections and assign grounds at  
15   the time of the trial, or at the time said  
16   deposition is offered in evidence, or prior  
17   thereto.

18                   \*\*\*  
19  
20  
21  
22  
23

A P P E A R A N C E S

ON BEHALF OF KEITH GAVIN:

CAROLINE L. SCHIFT

PRENTICE H. MARSHALL, JR.

Attorneys at Law

Sidley Austin

One South Dearborn

Chicago, Illinois 60603

ON BEHALF OF THE STATE OF ALABAMA:

PAMELA L. CASEY

Office of the Attorney General

Capital Litigation Division

500 Dexter Avenue

Montgomery, Alabama 36130

Page 4

I N D E X

PAGE:

EXAMINATION BY MS. SCHIFF	6
EXAMINATION BY MS. CASEY	152
EXAMINATION BY MS. SCHIFF	256
EXAMINATION BY MS. CASEY	262

MARKED PORTIONS OF THE TRANSCRIPT

PAGE 26, LINE 12
PAGE 51, LINE 21
PAGE 55, LINE 23
PAGE 86, LINE 17
PAGE 90, LINE 6
PAGE 105, LINE 14
PAGE 112, LINE 3

EXHIBIT LIST

DEFENDANT'S EXHIBITS

PAGE:

Defendant's Exhibit 10	7
Defendant's Exhibit 11	42
Defendant's Exhibit 12	120
Defendant's Exhibit 13	132
Defendant's Exhibit 14	132

STATE'S EXHIBITS

State's Exhibit 101	153
---------------------	-----

1 I, Dana Gordon, a Court Reporter  
2 of Birmingham, Alabama, and a Notary Public  
3 for the State of Alabama at Large, acting  
4 as Commissioner, certify that on this date,  
5 pursuant to Rule 30 of the Alabama Rules of  
6 Civil Procedure and the foregoing  
7 stipulation of counsel, there came before  
8 me on the 31st day of March, 2010, at the  
9 law offices of Maynard, Cooper & Gale, 1901  
10 6th Avenue North, Suite 2400, Birmingham,  
11 Alabama, 35203, commencing at approximately  
12 10:00 a.m., CRAIG HANEY, witness in the  
13 above cause, for oral examination, whereupon  
14 the following proceedings were had:

15 CRAIG HANEY,  
16 being first duly sworn, was examined and  
17 testified as follows:

18 EXAMINATION BY MS. SCHIFF:

19 Q Will you please state your full  
20 name for the record?

21 A My name is Craig William Haney,  
22 H-A-N-E-Y.

23 Q And you have provided us with an

1 updated copy of your CV, correct?

2 A I have, yes.

3 Q Is this it (indicating)?

4 A Let me see. Yes, it is.

5 MS. SCHIFF: Can you please mark  
6 this as Defendant's Exhibit 10?

7 (Defendant's Exhibit No. 10  
8 was marked for identification.)

9 Q (BY MS. SCHIFF:) Can you please  
10 describe your educational background?

11 A I have a bachelor's degree in  
12 psychology from the University of  
13 Pennsylvania. I went to graduate school at  
14 Stanford University in psychology, received  
15 a master's degree and a Ph.D.

16 Early in my graduate career in  
17 psychology I became interested in law  
18 related issues, and so I also went to --

19 MS. CASEY: Objection as to  
20 narrative. I'll ask you to break the  
21 questions up into -- or break the questions  
22 down into questions rather than the witness  
23 just testifying or talking.



1 A So I went to law school and  
2 got --

3 MS. CASEY: I'm going to ask you  
4 to break down -- break the questions down.

5 MS. SCHIFF: And I'm saying he  
6 can answer.

7 A I went to law school and got a  
8 J.D. Degree at the same time as my Ph.D.

9 Q Where did you get your J.D.?

10 A At Stanford University where I  
11 was also in graduate school.

12 Q And where are you currently  
13 employed?

14 A At the University of California  
15 at Santa Cruz.

16 Q What's your position?

17 A I'm a professor of psychology.

18 Q And how long have you been a  
19 professor at UC Santa Cruz?

20 A I've been a professor there since  
21 1978, I believe.

22 Q What classes do you teach?

23 A I teach a range of classes, some

1 in the undergraduate curriculum, some in the  
2 graduate curriculum. I teach an  
3 undergraduate class in psychology and law,  
4 and I teach a class called the Social  
5 Context. I teach a research seminar in  
6 crime and the media. Those are all  
7 undergraduate classes.

8 I also teach in the graduate  
9 curriculum, and over the years I've taught a  
10 variety of courses: Institutional analysis,  
11 social psychological theory. I've also  
12 taught a lot of courses in methodology. So,  
13 I teach a course in experimental psychology  
14 for graduate students in psychology, a  
15 course on other kinds of research methods,  
16 ethnography and also survey research  
17 methods.

18 Q And have you received any  
19 academic awards or honors during your tenure  
20 at UC Santa Cruz?

21 A Yes, I have. I've received  
22 National Science Foundation grants, a number  
23 of teaching awards. I received an award for

1 a book I wrote a few years ago. A whole  
2 range of different things.

3 Q And are those included in your  
4 CV?

5 A They are.

6 Q Do you have any area of academic  
7 specialization?

8 A Yes, psychology and law.

9 Q And what are your areas of  
10 expertise?

11 A Well, within the general area of  
12 psychology and law, which is the application  
13 of psychological principles to legal issues,  
14 I've focused on a couple of separate issues.

15 Very early in my career I started  
16 working on prisons, the way in which people  
17 are changed and affected by living and  
18 working in prison environments. And that  
19 was the area that I first began to do  
20 research.

21 I also became interested in --  
22 almost as an outgrowth of that work  
23 interested in the kinds of forces, social

1 historical and social circumstances that  
2 influence and affect people in criminal  
3 behavior, essentially the social historical  
4 determinants of criminal and particularly  
5 serious criminal behavior.

6           So, I studied the backgrounds and  
7 histories of people that have been involved  
8 in serious violent crime, typically capital  
9 cases. And I also became interested in the  
10 various aspects of capital punishment, the  
11 procedures by which the death penalty is  
12 implemented in our society, the legal  
13 process, the ways in which it differs from  
14 other kinds of criminal cases and including  
15 jury decision making in capital cases.

16 Q           You said when you first began you  
17 were -- one of your areas of expertise was  
18 the effect of institutional history. When  
19 was that?

20 A           Well, I became interested in how  
21 institutions affect people very early on. I  
22 was still a graduate student, 1971, '72.

23 Q           And have you published any books

1 or articles on that topic?

2 A I have published a lot of  
3 articles, book chapters and a book on the  
4 psychology of imprisonment.

5 Q What are the books that you have  
6 published?

7 A Well, I have published a book on  
8 the death penalty, on capital punishment  
9 called "Death by Design."

10 The book on prisons is called  
11 "Reforming Punishment, Psychological Limits  
12 to the Pains of Imprisonment."

13 Q And who published your book  
14 "Reforming Punishment"?

15 A The American Psychological  
16 Association.

17 Q Are you a member of the American  
18 Psychological Association?

19 A Yes.

20 Q And what's the process for  
21 getting a book published by them?

22 A Well, you submit a book proposal  
23 to a series editor. In this particular case

1 it was -- the particular book series was  
2 "Psychology, Law and Public Policy." And  
3 that's -- that proposal then is read by an  
4 editorial committee who reviews the quality  
5 of the proposal and the qualifications of  
6 the author.

7 And then you -- if you're  
8 authorized to proceed with the book, then  
9 you are asked to in fact submit a  
10 manuscript, and that manuscript is then sent  
11 out to -- for review by an independent group  
12 of reviewers as well as the editorial board  
13 of the particular book series. And if they  
14 approve the book, then you proceed in  
15 publication.

16 Q And did that book win any awards?

17 A It didn't win. It was nominated  
18 actually. The American Psychological  
19 Association Press, what's actually called  
20 APA Books, like all publishers select a book  
21 each year out of their entire collection of  
22 books that were published that year and  
23 nominate it for the National Book Award.

1           And the year my book was  
2 published, 2006, there were several dozen  
3 books that the APA published. My book was  
4 selected as a book that they nominated for  
5 the National Book Award. It didn't win, but  
6 it was nominated for it.

7           Q           And in that book did you discuss  
8 the concept of institutionalization?

9           A           Yes. The book itself deals with  
10 the issue of how people are changed and  
11 affected by prisons in a variety of ways.  
12 And institutionalization is a shorthand  
13 expression for summarizing those changes,  
14 those effects, if you will.

15          Q           So, just to summarize, the  
16 American Psychological Association published  
17 a book that you wrote on  
18 institutionalization?

19          A           A book in which  
20 institutionalization was a significant part  
21 of the discussion and analysis, yes.

22          Q           Do you happen to know based on  
23 the records you've reviewed in this case if

1 Dr. King, the State's witness, is a member  
2 of the American Psychological Association?

3 A I believe he is. I assume he is,  
4 yes.

5 MS. CASEY: Objection.  
6 Speculation.

7 Q Did you ever get an opportunity  
8 to see Dr. King's CV?

9 A Yes.

10 Q And is it listed that he's a  
11 member of the American Psychological  
12 Association?

13 A Yes, that's what it indicates.

14 Q And are you aware that Dr. King  
15 testified at the Rule 32 hearing that he did  
16 a search of the American Psychological  
17 Association database and didn't find any  
18 information on institutionalization?

19 A Yes.

20 Q And again, that's the same  
21 organization that actually published your  
22 book that deals with those concepts?

23 A Yes.



1 MS. CASEY: Objection. The  
2 witness has already testified that his book  
3 wasn't on institutionalization.

4 Q (BY MS. SCHIFF:) Have you also  
5 written any book chapters in other books?

6 A Yes.

7 Q And on what subjects?

8 A Well, I've written a lot of book  
9 chapters on the topic of how people are  
10 changed and affected by prison conditions,  
11 their experiences in prison.

12 I've written book chapters on  
13 other topics as well, on -- on how the study  
14 of someone's social and institutional  
15 history helps to explain their behavior,  
16 their criminal behavior; how the study of  
17 someone's social and institutional history  
18 is an important part of a case in mitigation  
19 and capital litigation.

20 I've written book chapters on  
21 other topics having to do either with  
22 prisons, prison conditions or having to do  
23 with various aspects of capital punishment.

1 Q And how many articles have you  
2 published on that -- on this topic of  
3 institutionalization?

4 A You know, I honestly don't know.  
5 I would say total publications probably a  
6 couple of dozen things which bear directly  
7 or either indirectly, but nonetheless  
8 substantially on the issue of  
9 institutionalization or the effects of  
10 imprisonment.

11 Q And have you published -- and  
12 have any of those articles been published in  
13 journals?

14 A Yes, sure.

15 Q And which ones?

16 A Gee, there's a lot. There's --  
17 there are quite a few. I began publishing  
18 on this issue, this particular topic in  
19 1973. So, there's a number of different  
20 publications which -- which address this  
21 issue ranging back from 1973 to the present.

22 For example, one -- one  
23 publication in the American Psychological

1 Association Journal called "Psychology, Law  
2 and Public Policy" is a long article, a  
3 50-plus page article on the effects of  
4 imprisonment basically, about how prison  
5 conditions have changed and how they've  
6 changed the people who are confined in them,  
7 including a discussion of  
8 institutionalization and prisonization.

9 Q And you used the word  
10 "institutionalization" in that article or  
11 prisonization?

12 A I suspect I do, but I certainly  
13 talk about the -- the phenomenon itself.

14 Q And that's an article that was  
15 published in the American Psychological  
16 Association Journal? Is that --

17 A Yes. Most of the -- most of --  
18 most of the work that I do in psychology is  
19 published in APA journals, "Law and Human  
20 Behavior;" "Psychology, Public Policy and  
21 Law," those kind of journals.

22 Q And are those peer reviewed?

23 A Yes, of course. They all are.

1 Q And are any of those articles  
2 relevant to your opinions in this case?

3 A Well, yes. I mean, certainly the  
4 articles and book chapters I have done on  
5 the effects of imprisonment are all relevant  
6 to my opinions in this case.

7 Q Have you ever lectured or given  
8 invited addresses on the topics of  
9 institutionalization or the effects of  
10 imprisonment?

11 A Yes, yes, often.

12 Q And have you served as a  
13 consultant, and in what capacity?

14 A Yes, I have been a consultant  
15 actually quite a lot on this particular  
16 topic, and it dates back to -- even when I  
17 was still a graduate student in the 1970s I  
18 worked as a consultant to the Palo Alto  
19 Police Department and the San Mateo County  
20 Sheriff's Department helping to train jail  
21 guards or correctional officers who were  
22 working in the local county jail facilities  
23 on the effects of institutionalization and

1 the effects of being in a prison or  
2 jail-like environment.

3           Again, back in those years I  
4 served as a consultant to the California  
5 Department of Corrections, the Napa County  
6 Board of Supervisors; again, all strictly on  
7 the issue of institutionalization or what  
8 sometimes is called prisonization,  
9 institutionalization in a prison-like  
10 context.

11           Over the years I have served as a  
12 consultant to the United States Department  
13 of Justice, their special litigation unit.  
14 I worked on analyzing prison conditions  
15 throughout the United States, prison  
16 conditions in some -- in some instances  
17 forensic hospitals, prison-like hospital  
18 facilities.

19           And I worked for them analyzing  
20 the effects of specific prison institutional  
21 environments on people who were confined in  
22 them. So, the process of  
23 institutionalization or prisonization as a

1 function of the nature of the conditions in  
2 those institutions.

3 I worked for a number of  
4 legislative committees primarily in  
5 California on providing an analysis of the  
6 effects of institutional conditions and  
7 prisonization on prison violence levels both  
8 in juvenile and adult facilities in  
9 California.

10 I was on a task force that was  
11 put together for the Department of Health  
12 and Human Services in the 1990s under the  
13 Bush administration who had become concerned  
14 with the issue of people returning to prison  
15 once they had been released from prison,  
16 recidivism, and its impact on families.

17 And so I -- I worked with them  
18 along with a number of other scholars  
19 analyzing why rates of recidivism were so  
20 high and what the Department of Health and  
21 Human Services could do to reduce the amount  
22 of recidivism or returning to prison that  
23 was occurring.

1           And my part of that was to  
2 analyze the effects of institutionalization  
3 and prisonization on people who were being  
4 released from prison as a factor that  
5 comprised their post-prison adjustment and  
6 made it more likely for them to go back into  
7 prison.

8           I spent time with the Department  
9 of Health and Human Services training  
10 representatives of community organizations,  
11 many of them were church groups, but others  
12 were civic organizations who came for  
13 training in Washington, D.C. to take into  
14 account the psychological effects or effects  
15 of institutionalization on the people who  
16 were returning to their communities from  
17 prison facilities to minimize the negative  
18 impacts of the prison experience and make it  
19 more likely that they would be able to  
20 reintegrate into their families and  
21 reintegrate into the community.

22           I was -- I participated in a  
23 summit at the White House in the year 2000

1 in which the -- the focus of the several day  
2 summit was to bring together available,  
3 existing knowledge from the scientific  
4 community on the prevention of crime and on  
5 the improvement of prison rehabilitation  
6 programs.

7 And again, my part of that was to  
8 talk about the effects of imprisonment  
9 largely. I talked about a few other things,  
10 but the working group I ended up being  
11 involved in continuing after that was --  
12 dealt with the issue of institutionalization  
13 and its effects.

14 I served as a trainer for the  
15 International Committee of the Red Cross.  
16 So, I spent a week --

17 MS. CASEY: Objection. There's  
18 no question before the witness at this time.

19 MS. SCHIFF: I'll move on.

20 Q (BY MS. SCHIFF:) At our request  
21 have you agreed to testify in Keith Gavin's  
22 Rule 32 proceeding?

23 A Yes.



1 Q And what specific areas of  
2 expertise have you been asked to testify  
3 about in this case?

4 A You asked me to testify about --  
5 provide opinions about the effects of  
6 imprisonment generally, the effects of  
7 imprisonment on Mr. Gavin, whether or not he  
8 appeared to be institutionalized as a result  
9 of his 17 years in prison, and also an  
10 opinion about his potential for positive  
11 adjustment in prison and the issue of  
12 possible institutional failure in this case.

13 Q And were you also asked to  
14 testify about your -- any involvement in the  
15 original trial of Keith Gavin?

16 A Yes.

17 Q And can you describe what you  
18 mean by institutionalization just briefly?

19 A Yes. Institutionalization is the  
20 process of change that occurs in people when  
21 they are placed in institutional --  
22 typically total institutional settings.

23 Q And you mentioned some research

1 that you've done on this subject. What did  
2 that research consist of?

3 A Well, I've done a wide range of  
4 research on this topic beginning in 1971  
5 when I and my colleagues did an experiment  
6 on the effects of imprisonment. And after  
7 that we moved on to looking at  
8 institutionalization or prisonization in  
9 actual prison contexts, and I have been  
10 studying that phenomenon ever since.

11 So, that kind of research, the  
12 research on real institutions involves  
13 interviews with -- primarily with prisoners  
14 but also with staff, correctional officers  
15 and the administrators sometimes and  
16 sometimes the evaluation of institutional  
17 files, records looking at people's  
18 individual institutional histories or in  
19 other instances aggregate records,  
20 statistical summaries of the kinds of things  
21 that go on in institutional settings;  
22 sometimes, depending upon the issue,  
23 correlating certain kinds of institutional

1 conditions with certain kinds of changes  
2 that take place in prison.

3 Q And do you also tour and inspect  
4 prisons as part of your research?

5 A Yes. That's a fundamental part  
6 of it. I tour and inspect prisons all over  
7 the United States and the world really as  
8 part of that research.

9 Q And are you a clinical  
10 psychologist?

11 A No. I'm a social psychologist.

12 Q And have you attempted to  
13 diagnose Mr. Gavin with any psychological  
14 disorder?

15 A No. I don't diagnose people, and  
16 I haven't diagnosed Mr. Gavin.

17 MS. CASEY: I want to hear that  
18 question again, please.

19 MS. SCHIFF: Have you --

20 MS. CASEY: Wait. Let me ask the  
21 court reporter to read it back, please.

22 (Record read.)

23 MS. CASEY: And the answer was?

1 THE WITNESS: The answer was no,  
2 I don't do diagnoses.

3 MS. CASEY: No. I'm asking the  
4 court reporter.

5 (Record read.)

6 MS. CASEY: Could you mark that  
7 for me, please?

8 Q (BY MS. SCHIFF:) Is  
9 institutionalization a recognized diagnosis?

10 A No, I don't believe it is.

11 Q Is it considered a social  
12 phenomenon?

13 A It's a social phenomenon or  
14 process, yes.

15 Q And is that -- is the social  
16 phenomenon of institutionalization confirmed  
17 by scientific data and literature?

18 A Yes, it's a well confirmed,  
19 elaborately researched phenomenon or  
20 process.

21 Q And some of that literature is  
22 peer reviewed I think you mentioned?

23 A Yes. It dates back a long time

1 ago and even in the old days they were doing  
2 peer reviews. But yes.

3 Q So, if institutionalization is  
4 not a diagnosis in your opinion, why is it  
5 relevant to this case?

6 MS. CASEY: Objection as to  
7 his -- his belief as to why it's relevant.

8 Q If institutionalization is not a  
9 diagnosis in your opinion, why do you think  
10 that it's relevant to this case based on  
11 your experience?

12 A Well, it's always relevant to a  
13 potential case in mitigation in capital  
14 cases. To the extent to which somebody has  
15 been in an institutional setting, then  
16 that -- their institutional history and the  
17 events and experiences that occurred while  
18 they were in an institutional setting are  
19 part of their social history.

20 Social histories are a  
21 fundamental part of capital mitigation.  
22 Institutional histories and  
23 institutionalization is even more important

1 to study because institutional environments  
2 are typically very powerful places where  
3 very significant changes can take place in  
4 people.

5 This is precisely the kind of  
6 thing that is important to present -- to  
7 understand and present when it is -- it's  
8 significant in someone's life. Also because  
9 most lay people don't understand these  
10 issues, don't understand what happens to  
11 people in institutional settings.

12 Testimony that we give about  
13 somebody's family dynamics, for example, is  
14 typically easier for juries to understand  
15 because they've had a family. They've been  
16 in families. They have a feel for what  
17 proper parenting is and so on and so forth.  
18 But few of them have been in a prison. Few  
19 of them have ever come to terms with what  
20 happens to people in prison and how people  
21 who are in prison are changed by those  
22 experiences.

23 So, this is a critical part of

1 the education process that takes place in  
2 the case of mitigation.

3 Q And in your experience you've  
4 seen evidence of institutionalization  
5 presented at the mitigation phase of capital  
6 trials?

7 A Yes. In my experience it's  
8 typically always done in a case where it's  
9 present. I mean, obviously it wouldn't be  
10 presented if it wasn't part of the person's  
11 social history or if the period of  
12 institutional confinement was not  
13 particularly lengthy or didn't have a  
14 particularly significant impact.

15 On the other hand, when you're  
16 talking about a significant period of  
17 institutionalization, it then becomes part  
18 of a person's social history, which is, as I  
19 say, a required part of a case in  
20 mitigation.

21 Q You mentioned that this has been  
22 studied extensively. So, other -- there  
23 have been other studies and researchers who

1 have looked at the effects of  
2 institutionalization?

3 MS. CASEY: Objection. Leading.

4 Q Have there been any other studies  
5 or research done on institutionalization  
6 that have been published, to your knowledge?

7 A Yes, numerous, countless.

8 Q And are these -- are some of  
9 those examples listed in your declaration?

10 A Yes, just a few of the vast  
11 literature on this topic.

12 Q And have you served as a  
13 consultant in a capital murder case before?

14 A Yes.

15 Q Approximately how many times?

16 A I don't know for sure. I suspect  
17 by now it's over a hundred, if you mean just  
18 a consultant, have I consulted with  
19 attorneys, have I evaluated information or  
20 evidence, looked at case facts and so on.

21 Q For what purpose are you usually  
22 hired as a consultant?

23 A For -- typically for two related



1 purposes. To analyze and potentially  
2 develop an analysis of somebody's social  
3 history, which would include all of the  
4 important facts and circumstances and events  
5 which impacted their development and the  
6 direction or path of their life course. And  
7 that would include institutional related  
8 issues or institutionalization or  
9 prisonization, as I've called it, if -- to  
10 the extent to which that was part of a  
11 person's social history, and that could  
12 include analyzing their juvenile  
13 institutional history or adult institutional  
14 history as part of the overall social  
15 history.

16 And sometimes I've been consulted  
17 to evaluate a more specific or focused  
18 issue, which is somebody's potential for  
19 positive future adjustment in prison as a  
20 potential mitigating circumstance in a case  
21 where the jury is being asked to sentence  
22 them to prison for life without parole.

23 Q Have you ever been qualified in

1 court as an expert?

2 A Yes.

3 Q On the subject of  
4 institutionalization?

5 A Yes, both -- both specifically  
6 and then as a larger part of the issue of  
7 social history.

8 Q How many times have you been  
9 qualified in court as an expert  
10 approximately?

11 A On any topic?

12 Q On any of those two topics.

13 A I would estimate maybe 60 times  
14 or so. I'm not sure. I haven't calculated  
15 it precisely.

16 MS. SCHIFF: I would like to  
17 tender Dr. Haney as an expert at this time  
18 on the effects of institutionalization.

19 MS. CASEY: The State is going to  
20 make its objection as to first of all  
21 this -- Dr. Haney is not a clinical  
22 psychologist.

23 Second of all, he's already

1 attempting -- he's already indicated and I  
2 quote -- and the question was, "Mr." --  
3 "Dr. Haney, did you diagnose Mr. Gavin with  
4 any type of psychological disorder?"

5 Answer: "No. I don't diagnose people."

6 Therefore, this type of  
7 phenomenon or any type of  
8 institutionalization theory that's come up  
9 would be completely irrelevant as it's not  
10 generally accepted in the medical community.

11 Furthermore, the State is going  
12 to object that Dr. Haney's theory regarding  
13 institutionalization is not recognized  
14 clinical psychological diagnosis, nor is it  
15 mentioned in the "Diagnostic and Statistical  
16 Manual IV-TR."

17 Therefore, any type of  
18 determination as to institutionalization,  
19 there's no standard by which it could be  
20 governed by the Court or could have been  
21 governed by a jury back in 1998.

22 With those objections on the  
23 record, you may continue.

1 Q (BY MS. SCHIEFF:) Dr. Haney, will  
2 you tell us what the understanding of  
3 institutionalization was as of 1999 if you  
4 remember approximately?

5 A Well, I do because it hasn't  
6 changed very much. It's -- this is a  
7 phenomenon that has been described in the  
8 scientific literature for many, many years;  
9 decades. It's been studied by  
10 psychologists, sociologists, social workers  
11 and other mental health professionals.

12 And it is, as I described it, the  
13 understanding of what happens to people when  
14 they are placed in institutional settings,  
15 the way they are changed and affected by  
16 those settings and often times changed and  
17 affected by those settings in ways that  
18 impede their readjustment to  
19 non-institutional settings once they're  
20 released.

21 Q And you mentioned that you've  
22 testified about 40 or 50 times. Are you  
23 usually hired by the defense, or have you

1 ever testified on behalf of the State?

2 MS. CASEY: I'm going to object  
3 as to the form of the question. The witness  
4 testified he had testified 60 times. So,  
5 unless the --

6 MS. SCHIFF: I'm sorry.

7 MS. CASEY: Unless the witness  
8 wants to change his testimony, I'm going to  
9 object to the form of the question.

10 MS. SCHIFF: You're right.

11 Q (BY MS. SCHIFF:) I'm sorry.  
12 Dr. Haney, you testified approximately 60  
13 times. Are you usually hired by the  
14 defense, or have you ever testified on  
15 behalf of the State?

16 A I've testified for the United  
17 States Department of Justice, and I also --  
18 I mean, included in that 60 cases are cases  
19 in which there's not a prosecutor and a  
20 defense. Sometimes these are civil cases in  
21 which there are other -- other issues,  
22 non-criminal issues that are the focus of  
23 the litigation.

1           So, it's probably around 40 or 50  
2 times in a criminal proceeding and in the --  
3 in those instances it's been for the  
4 defense.

5 Q           And why do you think that is,  
6 that it's been for the defense in those  
7 criminal proceedings?

8           MS. CASEY: Objection as to the  
9 witness' belief or why he believes that's  
10 been the case. If counsel wants to ask him  
11 why he's always testified for the defense, I  
12 think that would be a more appropriate  
13 question.

14           MR. MARSHALL: Everything is  
15 taken subject to the objection.

16 A           Well, most of the testimony that  
17 I give in capital cases involves social  
18 history, social and institutional history.  
19 And that's not the kind of thing the  
20 prosecution ordinarily presents. They  
21 typically don't present a witness on those  
22 issues.

23 Q           And you mentioned that you've --

1 I'll strike that.

2 Have you ever been retained by  
3 the defense and after reviewing the  
4 defendant's records determined that the  
5 person's institutional history did not  
6 affect their subsequent behavior or was not  
7 a mitigating factor?

8 A Yes, yes, and particularly in  
9 cases where somebody hasn't been  
10 institutionalized for very long. It's not  
11 the case that everybody who steps into an  
12 institutional setting is immediately  
13 institutionalized.

14 So, you have to look at the  
15 records. You have to look at the length of  
16 time. You have to look at typically the  
17 client's records as well as his or her --  
18 the effects that they manifest and how they  
19 talk about the experience.

20 So, there are cases in which  
21 people have gone into institutional settings  
22 typically for a brief period of time and  
23 show no discernable effects of it and don't

1 have much trouble reintegrating back into  
2 society once they've been released.

3 Q Have you ever been -- reviewed a  
4 defendant's records and determined that the  
5 person does not have a potential for  
6 positive future adjustment?

7 A Yeah, that happens all the time.  
8 That happens often because not everybody  
9 can -- not everybody handles prison well.  
10 They -- they -- they don't -- at the time I  
11 look at them or at the time I look at the  
12 file they may be on the upswing of the arc  
13 of prison misbehavior or prison infractions  
14 and -- and therefore are not a suitable  
15 candidate for positive prison adjustment.  
16 They may get to that point later on, but at  
17 the time I look at the file, I'm not in a  
18 position to say that yes, this person is  
19 going to go to prison and do well.

20 Q So then you've taken cases that  
21 you haven't actually testified in because of  
22 that, because you weren't able to find  
23 positive future adjustment?



1 A Oh, sure, yeah. I mean,  
2 I analyze a case -- you know, I said earlier  
3 I had been a consultant on cases that I  
4 didn't actually testify in. When you look  
5 at the file, you do an analysis of it and  
6 you say this is -- this is my opinion. I  
7 don't -- you know, if the attorney decides  
8 it's not going to be helpful, sure.

9 Q You were hired by counsel for  
10 Mr. Gavin, correct?

11 A Yes.

12 Q And what's your understanding of  
13 what you were asked to do?

14 MS. CASEY: Objection. Asked and  
15 answered.

16 Q Specifically with regard to  
17 institutionalization.

18 A You asked me to form an opinion  
19 about institutionalization or prisonization  
20 in general, specifically with respect to  
21 Mr. Gavin having reviewed various documents  
22 and records which you provided me, also to  
23 form an opinion about the extent to which

1 based on those records he appeared to be a  
2 candidate for positive prison adjustment;  
3 and also, as I recall, to analyze the issue  
4 of institutional failure in this case  
5 primarily based on the records and my  
6 interview with him.

7 Q In connection with this  
8 assignment, did you submit a declaration?

9 A I did.

10 Q And is this a copy of that  
11 (indicating)?

12 A Yes, it is.

13 Q And is that your signature on the  
14 last page?

15 A It is.

16 MS. SCHIFF: I would like to  
17 admit this declaration into evidence as  
18 Defendant's Exhibit 11. It should already  
19 be part of the record and it can be  
20 cross-referenced with Petitioner's Brief  
21 Exhibit II.

22 MS. CASEY: Are there any  
23 additions or changes that have been made to

1 that report since it's been submitted to the  
2 State?

3 MS. SCHIFF: No, there isn't.

4 MS. CASEY: No objection.

5 MS. SCHIFF: If you could mark  
6 this as Defendant's Exhibit 11.

7 (Defendant's Exhibit No. 11  
8 was marked for identification.)

9 Q (BY MS. SCHIFF:) Dr. Haney, does  
10 this declaration reflect the opinions you've  
11 reached in this case?

12 A It does.

13 Q And what documents did you review  
14 in preparing the declaration?

15 A I asked for and was provided by  
16 you a set of materials that included  
17 Mr. Gavin's prison records, his Illinois  
18 Department of Corrections prison records. I  
19 was provided a copy of a declaration or a  
20 report by Dr. Paramore, Betty Paramore.

21 You sent me some case-related  
22 briefing material, I think the initial  
23 briefs that were filed in the case. You

1 sent me a transcript of the original 1999  
2 jury trial, both phases of the trial from  
3 Alabama.

4           Subsequently you have -- after  
5 the preparation of this report you sent me  
6 some additional material that had to do with  
7 the transcripts of the hearing that occurred  
8 in this case. So, it would have been the  
9 testimony of Mr. Gavin, the testimony of  
10 Dr. Paramore, the testimony of Lucia Penland  
11 and the testimony of Dr. King.

12 Q           Did you also interview Mr. Gavin?

13 A           I did.

14 Q           And when did the interview take  
15 place?

16 A           August 2007.

17 Q           What was the purpose of  
18 interviewing Mr. Gavin?

19 A           I wanted to talk to Mr. Gavin  
20 about his institutional experiences in the  
21 Illinois Department of Corrections. I had  
22 his -- I had his file, but I wanted to hear  
23 his description of some of the ways in which

1 he was affected by the events that occurred  
2 and what his experience of these places was  
3 and also to hear his description of what it  
4 was like for him to be released after 17  
5 years and what difficulties he might have  
6 experienced as he tried to reintegrate into  
7 free society.

8 Q The documents that you stated  
9 that you reviewed including Mr. Gavin's  
10 prison report and Paramore's mitigation  
11 report, did you rely on -- and your  
12 interview of Mr. Gavin, did you rely on that  
13 in reaching your opinions in this case?

14 A Yes, I did.

15 Q And are these the type of  
16 materials that are customarily relied upon  
17 by professionals in your field?

18 A Yes.

19 Q Based on the records you  
20 reviewed, what was Mr. Gavin's prior  
21 experience being incarcerated?

22 A He had not -- he had not been  
23 incarcerated, not been imprisoned prior to

1 being sentenced to the Illinois Department  
2 of Corrections and entering that prison  
3 system in 1982.

4 Q And what was he -- do you recall  
5 what he was sentenced to?

6 A Yes. He was sentenced for, as I  
7 recall, 34 years, 17 of which he served.

8 Q And do all of your opinions in  
9 this case relate to Mr. Gavin's experience  
10 in the Illinois Department of Corrections  
11 between 1982 and 1997?

12 A Yes.

13 Q And the effect of that  
14 incarceration on Mr. Gavin's actions upon  
15 release?

16 A Yes.

17 MS. CASEY: I'm sorry. I didn't  
18 hear what you said.

19 MS. SCHIFF: And the effect of  
20 that incarceration on Mr. Gavin's actions  
21 upon release.

22 MS. CASEY: I'm sorry.

23 Q (BY MS. SCHIFF:) Dr. Haney, what

1 opinions did you research -- did you reach  
2 based on your review of relevant documents  
3 and your interview with Mr. Gavin?

4 A Well, I reached the opinion that,  
5 first of all, institutional experiences like  
6 the ones that Mr. Gavin had for the 17 years  
7 that he was in the Illinois Department of  
8 Corrections were significant and powerful,  
9 that they had an impact on him, that he did  
10 not emerge from those 17 years unscathed.  
11 He was influenced and affected by the  
12 institutionalization to which he was  
13 subjected while he was incarcerated and that  
14 those effects impeded or undermined his  
15 ability to positively adjust to free society  
16 once he had been released.

17 Q How old was Mr. Gavin when he  
18 entered the Illinois prison system?

19 A He was 22 years old.

20 Q Is that relevant to your  
21 opinions?

22 A It was, yes.

23 Q Why is that?

1 A Well, he -- at age 22 he was  
2 still a relatively young man. And so the  
3 effect of institutionalization on him I  
4 would expect to be based on his age  
5 relatively powerful given the age at which  
6 he entered and the length of the time that  
7 he was there.

8 People who go in much later in  
9 their life -- and it's not usual for  
10 somebody to enter an institutional setting  
11 late in life, but when they do, their --  
12 their personality, their -- who they are,  
13 their social maturity and so on has been  
14 fairly well established. And so they are  
15 less likely to be fundamentally changed by  
16 the experience.

17 A person going in at age 22 has  
18 had some life experiences but still not had  
19 many adult life experiences. He would have  
20 had his whole -- essentially his whole adult  
21 life stretched out ahead of him and -- and  
22 as you know, it was lived in a prison  
23 environment.



1           So, the kinds of things that  
2 20-year-olds typically do, people do through  
3 their 20s and through their 30s, learning  
4 who they are in the larger social world;  
5 establishing themselves in terms of  
6 occupation, job related status and identity,  
7 developing intimate relationships with  
8 people, developing long-term friendships,  
9 perhaps marrying, having a family, all of  
10 the sorts of things that people do in their  
11 20s and 30s.

12           In the case of somebody that  
13 enters prison at 22 with a 34-year sentence,  
14 those things are all going to happen inside  
15 a prison, and they -- those -- many of those  
16 events and experiences and maturing  
17 processes are not going to occur at all  
18 because of where -- where you are living and  
19 those that do occur are going to occur in  
20 the context of prison, and they're going to  
21 occur therefore very differently from the  
22 way those things occur outside of prison.

23           And then when somebody re-emerges

1 from that experience at age 39, as in  
2 Mr. Gavin's case, there are an enormous  
3 number of things they don't know,  
4 experiences they haven't had and an enormous  
5 number of things that have happened to them  
6 that have led them to react and led them to  
7 develop habits, habits of survival or  
8 accommodation that are very dysfunctional  
9 once they're released.

10 And absent any systematic and  
11 in-depth transitional assistance, training,  
12 counseling, therapy, once somebody is  
13 released from an environment like that,  
14 those habits that they've developed are  
15 going to get in their way. And those  
16 absences or gaps in their development, the  
17 things they haven't done that other 20 and  
18 30-year-olds did do to learn how to be  
19 functioning, normal social beings in the  
20 larger society are also going to get in  
21 their way.

22 And those are the adverse effects  
23 of institutionalization. And they are more

1 significant for a 22-year-old than they  
2 would be for a 47-year-old say.

3 Q And you mentioned that when

4 Mr. Gavin was released from Illinois prison  
5 he was 39 years old?

6 A Yes.

7 Q And that was relevant to your  
8 opinion I believe you said because he left  
9 prison suffering from institutionalization  
10 or as an institutionalized man; is that  
11 correct?

12 A Yes. He lived his -- he lived  
13 his -- most of his 20s and -- you know, a  
14 big percentage of his 20s and his 30s in an  
15 atypical, very atypical environment where  
16 what 20-year-olds and 30-year-olds need to  
17 learn to do to function in the larger  
18 society he was not exposed to. And that  
19 had -- that had an impact on him, a  
20 significant impact.

21 Q And how were you able to  
22 determine how Mr. Gavin functioned while he  
23 was incarcerated from 1982 to 1997?

1 A Well, I did it in the -- in the  
2 traditional way. I looked at his prison  
3 file. Prison files contain a lot of  
4 information about what people are doing when  
5 they're in prison settings, how they're  
6 functioning, how they're adapting. And  
7 there was -- the file in his case was a  
8 significant one, a substantial one. He was  
9 in for 17 years.

10 I also interviewed him about  
11 those things and listened to the way he  
12 talked about what -- the kinds of changes  
13 that he went through, the experiences that  
14 he had, how he adapted to being in that  
15 environment.

16 Q And was Mr. Gavin's institutional  
17 history relevant to any other issues in this  
18 case?

19 MS. CASEY: Objection as to  
20 form.

21 Q Was Mr. Gavin's institutional  
22 history relevant to the -- your opinion  
23 regarding institutional failure?

1 A Yes, it was. I was also  
2 interested in looking at whether or not the  
3 Illinois Department of Corrections addressed  
4 any of Mr. Gavin's pre-existing needs or  
5 problems and whether or not it appeared to  
6 have prepared him adequately to reintegrate  
7 back into free society once he was released  
8 17 years after his prison sentence began.

9 So, this would have entailed  
10 looking at things like the amount of time he  
11 spent in vocational training, what kinds of  
12 things he was involved in doing and how  
13 often he did them, whether or not he  
14 received any therapy or counseling for the  
15 problems which he had which led him into  
16 prison in the first place, whether he was  
17 given transitional counseling or help to  
18 deal with the issues of institutionalization  
19 or prisonization and what kind of services  
20 he was provided when he was released and  
21 placed on parole, assisting him with doing  
22 the -- on the one end, the kind of basic  
23 things that people need to do in order to

1 reintegrate into society and get -- and get  
2 meaningful work; and on the other hand, to  
3 ease the transition by providing  
4 psychological counseling dealing with some  
5 of the issues that I have been alluding to,  
6 particularly the effects of being  
7 institutionalized or undergoing  
8 prisonization for 17 years.

9 MS. CASEY: Will you mark this  
10 spot in the transcript for me, please?

11 Q (BY MS. SCHIFF:) Would  
12 Mr. Gavin's institutional history have been  
13 relevant to show his prospects for  
14 institutional adjustment?

15 A Yes, yes, very much so. So, you  
16 look at -- I looked at what kind of  
17 trajectory he had in the prison system. It  
18 helps you understand -- by which I mean what  
19 kind of disciplinary infractions did he  
20 have, when did he have them, was there a  
21 change in the pattern over time as a way of  
22 determining the extent to which he was  
23 adjusting to prison, which is an indication

1 not only of something good taking place;  
2 i.e., his adjusting to prison -- the prison  
3 environment and is he engaging in less or  
4 fewer disciplinary infractions, but also  
5 from a psychological perspective of the  
6 process of institutionalization taking  
7 place, if he's beginning to adapt to or  
8 accommodate to the routines of the  
9 institution as everybody must who is placed  
10 in these environments.

11           And it also gave me some insight  
12 into what kind of a prisoner he would be in  
13 the future. You look at somebody's  
14 trajectory in prison as well as their age.  
15 Age, as I suspect you will ask me in a  
16 little while, is a very important predictor  
17 of somebody's adjustment to prison  
18 environment.

19           So, I took those two things into  
20 account in making that assessment as well as  
21 talking to him about his own perspective  
22 while in prison.

23 Q           And in your opinion was there any

1 reason for defense counsel not to pursue  
2 these issues during Mr. Gavin's trial before  
3 Judge Rains in 1999?

4 MS. CASEY: Objection.  
5 Relevance.

6 A Absolutely not.

7 MS. CASEY: Can you mark this in  
8 the transcript, please?

9 Q (BY MS. SCHIFF:) I want to talk  
10 now about Mr. Gavin's institutional  
11 history. You mentioned that you reviewed  
12 Dr. Paramore's report, correct?

13 A I did.

14 Q And was there anything in that  
15 report that was relevant to your opinion  
16 that Mr. Gavin was institutionalized?

17 A Yes.

18 Q And what was that?

19 A Well, I -- I found Mr. Gavin's  
20 social history prior to going into prison to  
21 be quite significant. He was exposed to a  
22 very problematic childhood and adolescence  
23 that Dr. Paramore detailed in some length.



1 He lived in an impoverished area in Chicago  
2 in a notorious -- notorious and violent  
3 housing project, the kinds of places that  
4 books have written about that are so  
5 deteriorated and so violent and traumatic.

6 He was himself raised in a family  
7 that had lots of problems and dysfunction.  
8 He was exposed to domestic violence that his  
9 mother suffered at the hands of his father.

10 There were times --

11 MS. CASEY: I'm going to have an  
12 ongoing objection to this as hearsay.

13 A There were times when he was also  
14 himself mistreated by his father. He grew  
15 up in a family where the other children in  
16 the family began to suffer significant  
17 problems. I believe all of his brothers --  
18 all of the brothers in the Gavin family have  
19 been incarcerated at some point in time.

20 He was surrounded as he grew up  
21 by gangs and -- and people engaged in  
22 criminal activity.

23 The family struggled throughout

1 his life with issues of poverty. They lived  
2 in this housing project for most of his life  
3 around other low income people and what was  
4 in essence a segregated community. Only  
5 African-Americans lived in those housing  
6 projects, which was the subject of actually  
7 some litigation in Chicago during the years  
8 that Mr. Gavin was in the housing project.

9           So, he had in many ways a  
10 classically traumatic and abusive  
11 childhood. And that means that he was  
12 exposed to a number of risk factors that --  
13 that can create significant problems for  
14 children and adolescents that create in them  
15 vulnerabilities and tendencies towards  
16 suffering a range of problems as adults.

17 Q           And how does Mr. Gavin's social  
18 history affect the risk that he would become  
19 institutionalized later on?

20 A           Well, because he came from a  
21 trauma and risk factor filled life before he  
22 went into an institutional setting, which  
23 meant he had some vulnerabilities, that he

1 was not -- he was not necessarily  
2 psychologically unscathed as he entered the  
3 prison system.

4           And in addition, this means that  
5 a number of the experiences that he would  
6 have had or encountered in prison would have  
7 produced what is sometimes called  
8 retraumatization. That is to say he would  
9 have encountered things in prison that were  
10 parallel to or similar to the kinds of  
11 things that had already happened to him and  
12 the kinds of things from which he had  
13 suffered the psychological effects of  
14 already.

15           So, what happened in prison would  
16 have compounded or sat on top of those  
17 earlier experiences making him somewhat more  
18 vulnerable to the pains of imprisonment,  
19 making him somewhat more vulnerable to the  
20 shaping process that takes place inside  
21 prison.

22 Q           Is there also scientific data to  
23 suggest that pre-incarceration exposure to

1 trauma and violence increases the risk of  
2 victimization in prison?

3 A Yes. There's -- actually there's  
4 a recent study on exactly that issue, that  
5 people who have these kinds of significant  
6 trauma histories are much more likely to be  
7 victimized in prison and to have problems  
8 once they go to prison.

9 Q And what effect can that have on  
10 an inmate upon release from prison, those  
11 early traumatic experiences and the  
12 increased risk for victimization?

13 A Well, two -- two effects. One is  
14 that the effects of risk factors don't  
15 necessarily go away in somebody like --  
16 unless you've been treated for them.

17 So, you have -- the long-term  
18 effects of these risk factors are still  
19 present in somebody's life. And then on top  
20 of that there is the negative consequence or  
21 negative burden of institutionalization  
22 which somebody has to grapple with.

23 And to the extent to which

1 that -- those earlier traumas and risks  
2 increase the power or the capacity of the  
3 institution to further negatively affect  
4 you, then the effects of  
5 institutionalization are even greater once  
6 you are -- you are released, the negative  
7 effects of institutionalization.

8 Q You heard yourself Mr. Gavin was  
9 convicted of murder in 1982 and sentenced to  
10 34 years in prison at the age of 22,  
11 correct?

12 A Yes.

13 Q And according to his records, had  
14 he ever been incarcerated prior to that?

15 MS. CASEY: Objection. Asked and  
16 answered.

17 A No, he hadn't.

18 Q And in your experience is that  
19 unusual?

20 A Yeah, it is.

21 MS. CASEY: Objection as to the  
22 relevance.

23 A He -- it is unusual because

1 usually by the time somebody goes to prison  
2 with a long prison sentence like the one he  
3 had they have had some prior experience in  
4 an institutional setting.

5           It's unusual in my -- for me at  
6 least in my professional experience to  
7 interview somebody who has been sentenced to  
8 prison for murder and that's their first  
9 prison term. It's not unheard of to be  
10 sure, but it's an unusual event.

11 Q           Going back to Mr. Gavin's social  
12 history and the risk factors, are you aware  
13 that Dr. King opined in his declaration that  
14 it was contradictory to state that Mr. Gavin  
15 was exposed to many risk factors, yet did  
16 not have a criminal record or juvenile  
17 record?

18 A           Yes.

19 Q           And does the fact Mr. Gavin had  
20 no juvenile record necessarily mean that he  
21 did not engage in criminal behavior as a  
22 juvenile?

23 A           No, it doesn't at all. I mean, I

1 really don't quite understand that, but let  
2 me explain it accurately.

3 I -- if I understood Dr. King, he  
4 was suggesting that somehow because somebody  
5 could have been exposed to those factors and  
6 they don't engage in criminal behavior is a  
7 contradiction. There is no contradiction  
8 whatsoever. That's not what the risk factor  
9 model suggests or -- or predicts even.

10 Risk factors are just that.  
11 They're risks. They're probabilities.  
12 They -- they attach a certain kind of  
13 probability to something happening in  
14 somebody's life.

15 And the fact that the  
16 predicted -- the predicted behavior hasn't  
17 occurred doesn't mean that the risks haven't  
18 had an impact or an effect and that those  
19 risks may not have an impact or an effect at  
20 a later point in time. This is not a model  
21 which is time limited.

22 So, somebody who has been exposed  
23 to risks has had certain vulnerabilities

1 created in them, which could impact them at  
2 a later point in time. And the fact that  
3 they didn't impact -- at least as Dr. King  
4 saw it, impact Mr. Gavin immediately doesn't  
5 mean that they were not going to impact him  
6 later on.

7           There's nothing at all  
8 inconsistent about that with the risk factor  
9 model. The risk factor model contemplates  
10 that. It's an explicit part of the risk  
11 factor model that suggests that these  
12 negative consequences can occur at different  
13 points in time in somebody's life.

14           They are not, contrary to what he  
15 said, models which look only at juvenile  
16 delinquency. They rather predict adult  
17 behavior as well. All of the risk factor  
18 models take that into account.

19           So, there is -- there is no --  
20 there is no contradiction whatsoever there.

21           And in addition, incidentally,  
22 the fact that Mr. Gavin was not convicted of  
23 crimes as a juvenile does not mean that he



1 did not engage in them. And in fact, he  
2 did. He simply was not apprehended and was  
3 not incarcerated for them.

4 I was interested in whether or  
5 not he had experiences in institutional  
6 settings, not whether or not he had engaged  
7 in crime.

8 Q And what was Mr. Gavin's  
9 educational history when he entered prison  
10 for the first time?

11 MS. CASEY: Objection as to the  
12 relevance of this with this witness.

13 A He had relatively sparse  
14 education. He hadn't finished high school;  
15 didn't have a GED and as I recall, dropped  
16 out of school at around 10th grade maybe.

17 Q And what was his employment  
18 history at that time?

19 A Also spotty, sporadic. He had  
20 worked in a variety of menial jobs and  
21 not -- not for any consistent period of  
22 time. Odd -- odd jobs here and there.

23 Q And did the fact that he was

1 relatively uneducated and had limited work  
2 experience affect his experiences in prison?

3 A Yes, it did, very much so.

4 Q In what way?

5 A Well, he -- first of all, because  
6 of his limited educational history he was  
7 not able to participate in very many  
8 significant -- or what might have been  
9 significant vocational training programs or  
10 work experiences.

11 People like Mr. Gavin who go in  
12 without a high school diploma and without a  
13 GED are typically assigned to very menial  
14 tasks in prison. And indeed his prison  
15 record reflects exactly that.

16 Q I'll ask you a little bit more  
17 about that later, but where was Mr. Gavin  
18 initially housed when he entered prison?

19 A He came into the intake or  
20 reception center of Joliet Correctional  
21 Facility in Illinois.

22 Q And then from there where was he  
23 transferred?

1 A He was assigned to the maximum  
2 security prison at Stateville.

3 Q And you mentioned in your  
4 declaration that the Illinois maximum  
5 security prisons where Mr. Gavin was housed  
6 for a majority of his sentence were  
7 notorious. What did you mean by that?

8 A Well, as somebody who studies  
9 prisons -- you study the history of prisons  
10 and the history of prison systems. Joliet  
11 is a well-known facility in the history of  
12 American prisons, Stateville even more so.  
13 Again, books have been written about -- a  
14 very famous book by James Jacobs written  
15 about the Stateville institution.

16 It's also famous because it has  
17 the circular prison housing units that are  
18 relatively unique in modern American  
19 corrections. It's -- both places are large  
20 facilities, Stateville much larger than  
21 Joliet. And Stateville is a particularly  
22 notoriously violent prison and has been for  
23 many, many years and was during the period

1 of time that Mr. Gavin was there.

2 Q And was the majority of  
3 Mr. Gavin's time in prison spent in those  
4 type of maximum security prisons?

5 A Yes. He went from Stateville  
6 directly to Menard, which is another very  
7 large maximum security prison with a  
8 notorious reputation. Not just in Illinois  
9 but nationally.

10 Q What effect does that have on  
11 your opinions, the fact that Mr. Gavin spent  
12 most of his time in maximum security  
13 institutions in Illinois?

14 A Well, it has a big effect on  
15 my opinions. He went into a very  
16 significant -- significantly dangerous  
17 environment from the very outset.

18 He was a young man with no prior  
19 prison history, and he went into one of the  
20 most notorious prisons in the United  
21 States. It was and he perceived it to be a  
22 very dangerous place.

23 Also, it was a maximum security

1 prison where there were lots of rules and  
2 regulations where disciplinary infractions  
3 were dealt with very harshly and where there  
4 are relatively few opportunities for him to  
5 program or rehabilitate.

6 Q You mentioned Stateville and  
7 Menard in Illinois. Do you think that a  
8 jury in Alabama would have an understanding  
9 in your experience about the kind of -- what  
10 kind of place that is and how that might  
11 affect somebody?

12 MS. CASEY: Objection.  
13 Speculation as to what an Alabama jury might  
14 think or -- about any type of description of  
15 an Illinois prison.

16 A I don't think a jury anywhere  
17 would understand. There's no reason why  
18 they would understand --

19 MS. CASEY: Objection. Lack of  
20 foundation for -- for any type of  
21 speculation on that matter.

22 A -- the nature of prison  
23 conditions; certainly not in these very

1 dangerous, large, maximum security prisons  
2 and certainly not the notoriety of places  
3 like Joliet and Stateville and Menard.

4           There has been actually quite a  
5 bit of research done on what people  
6 understand about the nature of prison and  
7 public misconceptions about what prison life  
8 is like, about how people are affected by  
9 prison conditions.

10           And the public in general does  
11 not know, does not understand what goes on  
12 inside of these places, cannot understand  
13 why prisoners aren't rehabilitated from the  
14 many experiences which they had inside which  
15 are supposed to promote their positive  
16 social growth.

17           And part of what they don't  
18 understand is they don't understand all of  
19 the rest of the things that prisoners deal  
20 with when they're in a maximum security  
21 prison that work to undermine the  
22 development of those -- of those positive  
23 qualities or outcomes.

1 Q So, in your opinion do you think  
2 that it would be important for an expert on  
3 those types of issues to explain that to a  
4 jury at the mitigation phase of the trial?

5 MS. CASEY: Objection to form of  
6 the question. I'm not sure what that is and  
7 those are.

8 A I think it would be critically  
9 important to explain the nature of prison  
10 life and how people are affected by prison  
11 life in a case where somebody has been in  
12 prison for 17 years and committed a crime  
13 shortly after they were released.

14 Q And you mentioned that Mr. Gavin  
15 perceived those prisons as dangerous  
16 places. Did he tell you how he felt when he  
17 first entered prison?

18 A Yeah. He was terrified. He was  
19 very frightened. He didn't know what to  
20 expect, and as it turned out, his fears were  
21 well founded.

22 MS. CASEY: I would like to put  
23 an objection on the record as to hearsay.

1 Q (BY MS. SCHIFF:) Did Mr. Gavin's  
2 prison record support that he felt that it  
3 was a dangerous place?

4 A Yes. He told -- as he entered  
5 the prison system he told a correctional  
6 interviewer that he was concerned because he  
7 was being harassed by a prison gang when he  
8 entered the prison. He was subsequently  
9 involved in being attacked.

10 On one occasion just a couple of  
11 years into his prison term he was actually  
12 violently attacked.

13 Q And I'll ask you about that, but  
14 you mentioned that Mr. Gavin upon entering  
15 the prison told the prison guards that he  
16 was concerned with his safety. Do his  
17 records reflect that was he placed in  
18 protective custody?

19 A Yes, it did. He was put in  
20 protective custody early on.

21 Q And what is -- in your experience  
22 what does being in protective custody  
23 entail?



1 A Well, it entails pretty much the  
2 same thing in each prison system and in  
3 Illinois as well you're placed in a special  
4 housing unit where you have limited contact  
5 with the rest of the prison. You are  
6 surrounded by other people who have -- who  
7 are vulnerable, who have protection related  
8 concerns and they would -- they would  
9 vary in -- they would run the gamut. In a  
10 prison setting there's a variety of reasons  
11 why people would be in what's called either  
12 protective custody or safekeeping.

13 And your -- your -- because your  
14 contact with the rest of the prison system  
15 or the rest of the inside of that prison is  
16 limited your activity is restricted. You  
17 are often times kept in your cell for long  
18 periods of time. You are prohibited from  
19 being involved in many of the kinds of jobs  
20 or vocational training experiences that take  
21 place, you know, outside of the prison  
22 because that would require you to have  
23 contact with the larger general population

1 of the prison.

2           So, they're very -- they're very  
3 restrictive units, and there's typically not  
4 very much for people to do in these units,  
5 and there's often times a very long or large  
6 amount of in-cell time. You sit in your  
7 cell a lot.

8 Q           Does being placed in protective  
9 custody have any effect on how an inmate is  
10 viewed by other inmates in your experience?

11 A           Yes, it typically does. It is  
12 not something which other prisoners look on  
13 kindly. It suggests to other prisoners that  
14 you are not able to take care of problems  
15 yourself or it sometimes may imply that  
16 you've done something that involves  
17 cooperating with prison authorities and so  
18 on and that that's why you've been placed in  
19 protective custody.

20           So, yes, there is a certain kind  
21 of degraded status that prisoners who are in  
22 protective custody are given by the other --  
23 other prisoners. It's not a badge of

1 honor. Quite the opposite.

2 Q Besides being placed in  
3 protective custody, do Mr. Gavin's records  
4 indicate that he was concerned with his  
5 safety while in prison?

6 MS. CASEY: Objection. Asked and  
7 answered.

8 A Yes. There are numerous  
9 instances of him telling authorities that he  
10 is concerned about his own safety and in a  
11 number of instances asking to be placed in  
12 protective custody or safekeeping, other  
13 instances in which the prison responds to  
14 his concern by transferring him to other  
15 institutions because of his concerns about  
16 being victimized by other prisoners.

17 Q And we'll talk about his transfer  
18 history also in a little bit, but you  
19 mentioned that Mr. Gavin was a victim of  
20 physical violence while in prison. Can you  
21 tell us about that?

22 A Well, he -- yes. He was involved  
23 in -- there were a couple of instances in

1 which he was involved in fights. They  
2 appear to be mutual combat.

3 He tells me he was being  
4 pressured by gang members and other  
5 prisoners in the institution. And  
6 eventually because he wouldn't comply with  
7 their demands he was violently attacked  
8 with -- with a prison-made weapon, a shank,  
9 and was severely injured. He was placed in  
10 the hospital, had a fairly -- as far as the  
11 medical records reflect, a fairly lengthy  
12 hospital stay and continuing medical  
13 problems after that and as a result of that  
14 was placed in protective custody again for a  
15 long period of time.

16 Q Do you recall the year that he  
17 was stabbed?

18 A August 1984.

19 Q And besides being hospitalized,  
20 were there any other measures taken to  
21 protect Mr. Gavin as a result of that  
22 stabbing according to records?

23 A Well, eventually he was

1 transferred. He was placed in protective  
2 custody and then he was transferred out of  
3 the institution.

4 This happened when he was at  
5 Stateville. This happened in this big and  
6 notorious maximum security prison that he  
7 was in.

8 But then he went -- he was  
9 transferred to Menard, which is another big  
10 and notorious maximum security prison, but  
11 it wasn't -- but obviously the advantage of  
12 being at Menard was that the people who  
13 attacked him were not there and presumably  
14 whatever problem had led to that particular  
15 attack was not present at Menard.

16 Q Do the records indicate why  
17 exactly he was transferred to Menard? Did  
18 they say?

19 A I thought, as I recall, they  
20 reflected that it was because of this,  
21 because it was -- out of protection related  
22 concerns.

23 Q And do the records indicate also

1 after that stabbing if Mr. Gavin felt the  
2 need to protect himself?

3 A Yes, yes. He -- he was written  
4 up for having a weapon of his own, an inmate  
5 shank.

6 Q And do the records indicate if  
7 Mr. Gavin ever used that shank to inflict  
8 violence upon any inmates or guards?

9 A No. The records are actually  
10 unclear as to whether it was really his  
11 shank, but he clearly didn't use it and --  
12 so, he didn't use it on an inmate and he  
13 certainly never used it on a correctional  
14 officer and he never has.

15 Q And do you remember another  
16 inmate signing an affidavit saying it was  
17 his shank or something like that?

18 A Yes, exactly. The -- the shank  
19 was found in the vicinity of the two of  
20 them, and the other inmate took  
21 responsibility for having it.

22 Q And this was considered a serious  
23 violation?

1 A Yes, it was.

2 Q And do you recall what punishment  
3 he received as a result of that?

4 A A hundred and eighty days loss of  
5 good time.

6 Q Did Mr. Gavin receive any other  
7 serious disciplinary write-ups, in your  
8 opinion what you would consider serious  
9 write-ups?

10 A No. In my opinion he's -- that's  
11 the only serious, significant write-up he  
12 has. He has others. He certainly has  
13 others. They are for either clearly minor  
14 and trivial things, but -- but the kinds of  
15 things that people get written up for in  
16 prison.

17 And even some write-ups that he  
18 has that are listed as major write-ups but  
19 are for otherwise insignificant things,  
20 having his television on too loud, listening  
21 to his television without his earphones on,  
22 these are things that are legitimate things  
23 certainly to write up a prisoner for, but

1 they're not major. They're not major  
2 disciplinary infractions.

3 Q You mentioned that the shank  
4 incident was the only what you would  
5 consider a serious disciplinary write-up.  
6 Is that the only write-up where he lost any  
7 significant amount of good time credits as  
8 well?

9 A Yes, exactly, which I find  
10 remarkable for somebody in for 17 years in  
11 those prisons.

12 Q And is this information that  
13 could have or should have been submitted to  
14 a jury?

15 A In my opinion it should.

16 MS. CASEY: Objection as to this  
17 witness' opinion as to whether or not this  
18 information should have been subjected to a  
19 jury.

20 Q Is this information that could  
21 have been submitted to a jury?

22 A Of course.

23 Q And in your experience should



1 this have been submitted to a jury?

2 MS. CASEY: Same objection.

3 A Yes.

4 Q What is your assessment of what  
5 happened after Mr. Gavin recovered from this  
6 incident of being stabbed and spent some  
7 more time in the prison system?

8 A Well, he -- a lot of things  
9 happened. He -- he was transferred to  
10 Menard.

11 He -- while at Stateville he  
12 continued to have some medical problems, and  
13 that's reflected in his medical file. He  
14 spent a number of periods of time in  
15 subsequent institutions in Menard and  
16 elsewhere in protective custody units. Not  
17 exclusively, but there were a number of  
18 instances in which he has concerns over his  
19 safety or the prison system has concerns  
20 over his safety. These were not all  
21 initiated by him by any means. And so they  
22 put him in a protective housing unit to  
23 safeguard him.

1           And his -- his behavior in the  
2 prison system begins to stabilize eventually  
3 over time so that there are fewer  
4 disciplinary infractions. But he is also  
5 transferred to a number of different  
6 institutions throughout the system, often  
7 times for security related concerns, a  
8 couple of instances in which he requested  
9 the transfer on his own without -- clearly  
10 being security or protection related issues,  
11 but the bulk of the transfers appear to be  
12 based on the concerns that either he or the  
13 institution has about his safety.

14 Q           Do you know how many times  
15 Mr. Gavin transferred prisons in the 17  
16 years that he spent in the Illinois  
17 Department of Corrections?

18 A           My count was 12.

19 Q           And you mentioned that the  
20 records indicate that the majority of those  
21 transfers were either done on behalf of the  
22 institution or Mr. Gavin?

23 A           Yes, that's my -- that was my

1 reading of the file. There -- it's  
2 explicitly mentioned in a number of them  
3 that he ends up being placed in a protective  
4 custody unit when he gets to the new  
5 institution.

6 Q In your view what effects do  
7 constant transfers have on a prisoner?

8 A Well, this kind of multiple  
9 transferring is problematic, and it's  
10 problematic in terms of the prisoner's  
11 ability to function or adjust inside the  
12 institution.

13 Transfers are very disruptive.  
14 Prisoners have to undergo a new  
15 orientation. Each time you go to a new  
16 institution you go through a new orientation  
17 procedure. You're typically housed in a  
18 special unit where you have significantly  
19 fewer privileges or freedoms because you're  
20 in orientation.

21 You often times either lose or  
22 have to wait a long period of time for your  
23 property as it's transferred from one

1 institution to another. So, that's  
2 disruptive if you have personal property and  
3 so on. The prison has to transfer their  
4 items and you don't carry that with you when  
5 you go from one place to the next. So,  
6 there is always inefficiency in terms of  
7 getting that material to you in your  
8 appropriate cell at your new prison.

9       You also -- and this is perhaps  
10 the most significant part of it. You have  
11 to learn a new set of rules and  
12 regulations. Even though the overall rules  
13 and regulations for the Illinois Department  
14 of Corrections would be the same, there are  
15 always local rules. There are always local  
16 practices. There are always individuals who  
17 have responsibility over you who have their  
18 own interpretation of the rules and  
19 they're -- and exercise their own discretion  
20 one way or the other. And you've got to  
21 learn all that.

22       And so that transition is often  
23 times very difficult for people to -- for

1 people to accommodate.

2           And the other part of that is  
3 that you have different -- there's different  
4 programming at other institutions. If you  
5 were in a program at the institution where  
6 you were housed, you are automatically going  
7 to be out of that program and into the new  
8 program in the institution to which you go.

9           So, job assignments, if you  
10 happen to be in school or if you happen to  
11 be in some kind of training program, you're  
12 going to have to wait to get into that at  
13 the new place that you go into. And  
14 wherever you were in the program -- let's  
15 say, for example, you were in school at the  
16 facility from which you're being  
17 transferred. That ends at that point.

18           There's no -- it's like  
19 transferring -- it's like moving from one  
20 place to the next. You go from one school  
21 system to the next except the difference is  
22 you don't automatically go into school, you  
23 don't automatically go into a job because

1 these kinds of things are relatively rare in  
2 prison and you have to wait your turn.

3 Q And do constant transfers make it  
4 more or less likely that a prisoner will  
5 become institutionalized in your experience?

6 A It can make it more likely  
7 because you have to -- you have to -- in  
8 order to accommodate to these many transfers  
9 you really have to become a person who just  
10 accepts the rules whatever they are wherever  
11 you go. You really have to just learn how  
12 to comply generically to what's going on  
13 around you. You cannot assume that what you  
14 learned in the last institution about how to  
15 behave is going to work here.

16 So, you have to basically give  
17 into the contingencies of the facility into  
18 which you are entering. And that can erode  
19 somebody's autonomy, their self-initiative.  
20 Because trying to assert yourself in a new  
21 environment is very problematic and can  
22 result in punishment and disciplinary  
23 write-ups and so on. So, you have to kind

1 of just become relatively passive in the  
2 face of these transfers.

3 Q And in your opinion was  
4 Mr. Gavin's history of being transferred 12  
5 times in 17 years unusual?

6 A Yes, it is unusual in my  
7 experience. It's not utterly and completely  
8 unheard of, but it's certainly unusual and I  
9 think problematic in terms of his  
10 adjustment, problematic in terms of his  
11 long-term ability to adjust to -- to the  
12 free world and also problematic in terms of  
13 his ability or opportunity to get any real  
14 programming going because he was moving --  
15 in a number of instances he was moving from  
16 one institution to the next.

17 Q You also mention in your  
18 declaration that after a period of time  
19 Mr. Gavin began to adapt to prison life  
20 after spending a certain amount of time  
21 there. What do you mean by that?

22 A Well, this is  
23 institutionalization or prisonization at

1 work. You -- you learn to adapt to, adjust  
2 to, model your behavior around the  
3 contingencies of the environment. You learn  
4 not to initiate behavior unless instructed  
5 to do so. You learn to comply with whatever  
6 rules and regulations are imposed upon you.  
7 You learn to turn right when you're told to  
8 turn right or left when you're told to turn  
9 left; not to go outside of the lines, as it  
10 were, and basically give into the  
11 contingencies of the institution. It's  
12 perfectly appropriate, and this is what  
13 prisoners are supposed to do.

14           The problem is that this kind of  
15 compliance doesn't translate over into free  
16 society. So, you begin -- you begin to  
17 become institutionalized by adjusting to the  
18 contingencies of prison life. You also  
19 learn how to become guarded, hypervigilant  
20 and careful around other people.

21           MS. CASEY: Will you please mark  
22 that?

23 A           Guarded, hypervigilant and



1 careful around other people, weary of  
2 others.

3           And so you start -- you start to  
4 adjust to this environment in ways that make  
5 your institutional adjustment good and  
6 positive and may very well create problems  
7 for you once you're released.

8           In fact, there have been studies  
9 that show that people who adjust really well  
10 to prison, often times this is negatively  
11 correlated with their post-prison  
12 adjustment.

13 Q           You mentioned that Mr. Gavin had  
14 one serious disciplinary infraction and some  
15 others when he first entered prison, and  
16 then it kind of tapered off after he spent  
17 about 10 years there. Do you know what  
18 percent of his disciplinary infractions  
19 occurred during the first 10 years that he  
20 was in prison?

21 A           Well, yes. Let me -- let me  
22 clarify. There was one and only one serious  
23 infraction in my opinion, and that was the

1 one we've talked about with the shank.  
2 There were other disciplinary infractions  
3 that he was written up for during that first  
4 10-year period. And my rough calculation of  
5 this was that in the first 10 years about 85  
6 percent of the total number of disciplinary  
7 infractions that he engaged in occurred.

8 In the final seven years of his  
9 incarceration there were about 15 percent of  
10 the infractions that were left. And by the  
11 time -- as we got closer and closer to the  
12 end, there were fewer and fewer of them.

13 Q And is that consistent with your  
14 opinion that Mr. Gavin became  
15 institutionalized?

16 A Yes. He learned how to adapt  
17 himself, his habits of thinking and acting  
18 to the requirements of the institution.  
19 This is what the prison wants of prisoners,  
20 and you can understand why. But it can be  
21 problematic for people once they're  
22 released.

23 MS. CASEY: Is this a good time

1 to take a restroom break?

2 MS. SCHIFF: Oh, sure.

3 (A break was taken at 11:21 a.m.

4 and the deposition resumed at

5 11:26 a.m.)

6 Q (BY MS. SCHIFF:) You mentioned  
7 that Mr. Gavin appeared to adapt to life in  
8 prison. In your view what are the -- some  
9 of the day-to-day realities of prison life?  
10 What are the kinds of things that prisoners  
11 generally deal with on a regular basis?

12 MS. CASEY: Object as to form.

13 A Again, prison requires a lot of  
14 psychological accommodation. This includes  
15 something I alluded to earlier. You have to  
16 become dependent on the rules and the  
17 structure of the institution which govern  
18 virtually all aspects of your behavior.

19 Obviously people in the outside  
20 world are expected to follow certain rules  
21 and regulations, but there's an enormous  
22 area -- or there are enormous areas of our  
23 life where we have total discretion over

1 what we do and how we do it. In prison this  
2 is not the case.

3           So, things like where you sleep  
4 and when you sleep and what you eat and  
5 where you eat and what kind of clothes you  
6 wear and how much toilet paper you use and  
7 all of these things are very carefully  
8 regulated, and you must comply to the  
9 demands of the institution with respect to  
10 these things.

11           And so there are fewer and fewer  
12 areas of your life where you make any  
13 decisions at all. And over a long period of  
14 time people begin to lose their capacity to  
15 make decisions in a meaningful way. Because  
16 the more straightforward way to govern your  
17 behavior is simply to governate as a  
18 function of what the institution is telling  
19 you to do and what the institution is  
20 telling you in terms of where you should go  
21 and how you should be.

22           The other thing that begins to  
23 happen is that you live in an environment

1 where you are surrounded by risks and  
2 dangers. And people learn fairly quickly to  
3 become hypervigilant or to become  
4 particularly sensitive to threats from other  
5 people. They become weary. They can become  
6 weary and suspicious and distrustful of  
7 other people.

8           You learn in this regard not --  
9 typically not to show weakness because  
10 weakness is a sign of potential  
11 vulnerability. And some people in that  
12 immediate environment may see that as a --  
13 as an opportunity to exploit you or to  
14 victimize you.

15           MS. CASEY: Will you mark that,  
16 please?

17 A           And so people become relatively  
18 unwilling to acknowledge problems which  
19 they're having. And as I say, weakness is  
20 one of the vulnerabilities which they may  
21 experience.

22           Sometimes people withdraw from  
23 the surrounding environment. And so, for

1 example, you see in Mr. Gavin's case he goes  
2 into protective custody at some sacrifice to  
3 himself. Protective custody is not an easy  
4 place to live.

5           So, he withdraws there partly  
6 because he's frightened or concerned about  
7 the larger prison society, and yet at the  
8 same time he ends up in an environment where  
9 there was a fair amount of isolation from  
10 other people.

11           Prisoners also live under very  
12 diminished circumstances. They learn to  
13 live without privacy. They learn to live  
14 without many of the kinds of goods and  
15 services, if you will, that people in the  
16 free world come to take for granted.

17           They often times live under very  
18 inhospitable and deteriorated living  
19 conditions, and many times they feel like  
20 they're being treated very badly by these  
21 conditions. And sometimes they begin to  
22 internalize those things and come to think  
23 of themselves as the kinds of people who

1 deserve this -- this kind of treatment and  
2 nothing more.

3           So, it can have a negative effect  
4 on your self-esteem. It can lead to periods  
5 or bouts of sadness, a sense of  
6 hopelessness, a lack of direction in their  
7 life.

8           And it can create enormous  
9 problems if you've been disconnected from  
10 the outside world and from contact with the  
11 outside world in terms of renewing  
12 relationships with people once you are --  
13 once you're released.

14 Q           You mentioned that being  
15 incarcerated for long periods of time can  
16 give prisoners a diminished sense of  
17 self-worth. Are you aware that Mr. Gavin  
18 talked about that upon his release from  
19 prison he was depressed?

20 A           Yes.

21 Q           And that's consistent with  
22 your -- with the fact that he was  
23 institutionalized?

1 A Yes. He told me the same thing,  
2 that he felt sad and depressed. And it's  
3 the kind of thing that I -- many prisoners  
4 have told me they anticipate great happiness  
5 once they're released. It's something that  
6 they've looked forward to you for years and  
7 years and years. And then upon being  
8 released they find that they're faced with a  
9 number of enormous, seemingly insurmountable  
10 obstacles and they tend to find themselves  
11 becoming what they describe as depressed or  
12 sad or feeling hopeless.

13 Q And what effect can  
14 institutionalization have on an inmate's  
15 relationships upon release?

16 A This is a devastating consequence  
17 of institutionalization. This is part of  
18 what we dealt with with the Department of  
19 Health and Human Services. It's a huge  
20 issue in the prisoner reintegration programs  
21 that have been developed throughout the  
22 United States.

23 There are two components to it.



1 One component is the simple fact of  
2 separation and distance -- emotional and  
3 psychological distance from one's family.

4 Unless a prisoner is fortunate  
5 enough to gets lots and lots of visits --  
6 and Mr. Gavin was not -- then family  
7 relationships and -- and social  
8 relationships begin to erode. Family  
9 connections and ties are fragmented and  
10 fractured. And so there is an emotional  
11 distance that gets created between the  
12 prisoner and the people to whom he will  
13 return.

14 And then the other thing that  
15 happens is that once somebody comes out of  
16 prison, they have in many ways lost the  
17 capacity to form intimate, genuine  
18 connections with people.

19 For many prisoners these things  
20 begin to come back over a period of months  
21 or years, but the initial transition is very  
22 difficult because they have lived in an  
23 environment where you are not supposed to

1 show weakness, where you are not supposed to  
2 show vulnerability, where you're not really  
3 in a position to have intimate -- intimate,  
4 close personal relationships with people.

5           And then you come back into an  
6 environment where those things are expected  
7 of you, where that's how you form a  
8 relationship with somebody. You form  
9 relationships by sharing events, by sharing  
10 concerns, by talking about vulnerabilities,  
11 by engaging in intimate conversation and so  
12 on and so forth.

13           Prisoners are not in a position  
14 to even express affection over the period of  
15 time or during the period of time that  
16 they're incarcerated. They don't of course  
17 have intimate or sexual relationships or  
18 typically don't on a long-term basis where  
19 they're affectionate with one another. They  
20 have very few opportunities to express  
21 affection even -- even in passing with  
22 members of the opposite sex.

23           And so again, these are all kinds

1 of things that they have to relearn once  
2 they get out of prison and they have to  
3 overcome these barriers of reconnecting with  
4 the world that has changed in a very  
5 significant way when you're talking about a  
6 period -- a hiatus of 17 years when you come  
7 back into a family that is fundamentally  
8 different and you encounter people who are  
9 now 17 years older than they were when you  
10 left, when you encounter a world that has  
11 changed 17 years' worth since you left it.

12 Q . . . And if a prisoner is released and  
13 enters a family that is considered  
14 dysfunctional or has a lot of problems, what  
15 effect can that have on his release or on  
16 his behavior upon release?

17 A Well, it's a huge problem.  
18 I mean, the only -- in my experience the  
19 only way that prisoners make it when they  
20 come out is if they go back into a very  
21 warm, supportive, stable family where  
22 they -- where the family is able to  
23 concentrate on the prisoner's problems and

1 needs or if they -- and you -- hopefully --  
2 and -- and they get -- they get counseling.  
3 They get help. They get transitional  
4 service. They get put in counseling groups  
5 or therapy groups where they are given an  
6 opportunity for people to talk them through  
7 some of the kinds of problems that I've been  
8 talking about.

9           If they don't get any -- if they  
10 don't get the latter and they come into a  
11 family that is beset with its own problems  
12 and they're not going to get the kind of  
13 attention and the kind of focus that they  
14 need, then there's really nobody to help  
15 them through this transitional period. And  
16 so the effects of institutionalization or  
17 prisonization are things they're going to  
18 have to grapple with on their own, and most  
19 people do this very ineffectively.

20 Q           And in your view what effect did  
21 Mr. Gavin's situation of being released into  
22 a family with a lot of problems have on  
23 his --

1 MS. CASEY: Objection. Asked and  
2 just answered.

3 Q Mr. Gavin specifically.

4 A Well, he did enter a family that  
5 was beset with a lot of their own problems.  
6 And he talked to me about his brothers  
7 dealing with problems. His mom -- you know,  
8 he was -- he felt very guilty about the  
9 situation that his family was in and  
10 particularly -- he felt particularly  
11 troubled by the fact that he was not in a  
12 position to do anything to help; that he had  
13 left this family, at least in his own mind,  
14 as having been a person who was able to help  
15 his brothers and sisters in some way,  
16 provide them some kind of minimal guidance.  
17 He was able to help them a little bit  
18 economically and had been, he thought,  
19 looked up to as a kind of provider and a  
20 kind of significant figure in the family.

21 And now he was coming back 17  
22 years later with his siblings grown up and  
23 having very serious problems many of them,

1 his mom still struggling and him as now a  
2 39-year-old man who should have been in a  
3 position to do something about this and help  
4 in a significant way, but he -- he felt  
5 unable to.

6 He told me -- and it makes  
7 sense -- that it diminished him. He felt as  
8 though he was -- he was unable to address  
9 any of these important issues. And I think  
10 that's part and parcel of the  
11 institutionalization problem I've been  
12 talking about.

13 He was not prepared to re-enter  
14 society. He came back having problems that  
15 you would anticipate somebody having and he  
16 came back to a family that needed his help  
17 rather than being in a position to help him.

18 Q And do the records indicate if  
19 Mr. Gavin was provided any counseling of any  
20 kind prior to his release?

21 A There was no -- there was no  
22 record of that anywhere in -- in the file  
23 that I could find throughout the -- not only

1 prior to his release but in the course of  
2 his entire 17 years.

3 Q And even if Mr. Gavin was never  
4 diagnosed with a mental illness, does that  
5 mean that he shouldn't have had counseling  
6 upon release or at any time during his  
7 prison sentence?

8 A No, absolutely not. We're  
9 talking about -- talking about somebody who,  
10 first of all, went into prison for a very  
11 serious crime and so therefore has to have  
12 had some kinds of problems that prison  
13 systems typically feel compelled to address.

14 I mean, this is a very serious,  
15 violent crime and ordinarily some kind of  
16 treatment or therapy or counseling is  
17 provided to somebody whether or not they  
18 have a diagnosable mental disorder before  
19 they are released.

20 In addition to that, for the  
21 reasons that I have been describing, he  
22 lived in an extraordinary society for 17  
23 years. And it is widely understood in

1 corrections that people who live in these  
2 places for that length of time suffer from  
3 the effects of institutionalization. This  
4 is not just a psychological theory. It's a  
5 correctional theory. It's well understood  
6 in corrections.

7           And that if somebody is going to  
8 make a successful transition, they need to  
9 have help in order to do that. They need to  
10 be given practical advice about certain  
11 things they need to do, how to get a  
12 driver's license, how to get a birth  
13 certificate, how to do a job interview and  
14 so on.

15           And they need to be given  
16 psychological help, how to deal with living  
17 in such a -- such an unusual and potentially  
18 psychologically damaging environment for 17  
19 years and now moving into another world  
20 where things that you haven't done for 17  
21 years are going to be expected of you now by  
22 everybody around you. And you need -- you  
23 need help to be able to understand that and



1 you need help to be able to do that. He  
2 didn't get any of that.

3 Q And again, is this the kind of  
4 information that could have been presented  
5 to the jury during the mitigation phase of  
6 Mr. Gavin's trial?

7 A Of course.

8 Q I want you to assume that when  
9 Mr. Gavin was released from prison he  
10 entered a dysfunctional family situation  
11 that was chaotic and where there were no  
12 rules or structure and that along came a  
13 seemingly successful authority figure,  
14 Dewayne Meeks. Would the fact that  
15 Mr. Gavin had been institutionalized make it  
16 more likely that he would follow Meeks'  
17 command?

18 A Sure.

19 Q Why is that?

20 A Well, Mr. Gavin spent 17 years  
21 taking orders from people like Mr. Meeks.

22 Q Who is Dewayne Meeks?

23 A Dewayne Meeks is his cousin

1 employed at the time Mr. Gavin  
2 re-encountered him after his release from  
3 prison as a correctional officer at the  
4 Illinois Department of Corrections.

5 Q And Mr. Meeks was a co-defendant  
6 in the case at one time, correct?

7 A Yes, that's what I understand  
8 from the documents.

9 MS. CASEY: I'm going to object  
10 as to the co-defendant. He was never a  
11 co-defendant with this defendant. He was  
12 indicted, but they were not indicted  
13 together.

14 Q (BY MS. SCHIFF:) And how could  
15 Mr. Gavin's institutionalization affect his  
16 behavior with Mr. Meeks in his position as a  
17 correctional officer?

18 A Well, the relative status between  
19 the two of them would have been dramatic and  
20 was dramatic in my opinion. We have a  
21 correctional officer who was -- who would  
22 have been in an institutional setting a  
23 person in charge, a person to whom Keith

1 Gavin would have had to have complied with,  
2 followed orders given by; over the years  
3 would have undoubtedly learned to do that  
4 implicitly, intuitively.

5 I mean, it's part of the  
6 institutionalization process not to -- not  
7 to question, not to -- but rather to --  
8 rather to do what you were told.

9 Now, nobody can do this a hundred  
10 percent, but people learn how to do it.  
11 They're conditioned to do it. They're  
12 socialized to do it when you're in prison.  
13 And you would assume that this would  
14 carry -- or I would assume it would carry  
15 over into free world society.

16 Mr. Gavin also talked with me  
17 about feeling disoriented and not quite  
18 understanding what he was supposed to do  
19 when he got out of prison, how to get his  
20 life in order, implement plans, figure out  
21 how to -- how to do the kinds of things that  
22 he was supposed to do in order to get a  
23 job. He applied for jobs, but he wasn't

1 sure why he wasn't succeeding and so on.

2 And this --

3 MS. CASEY: I'm going to object  
4 now as to non-responsive. The question was  
5 about Meeks and whether or not any type of  
6 influence Meeks would have had on Gavin when  
7 he got out of prison. At this point he's  
8 talking about job selections.

9 Q (BY MS. SCHIFF:) Okay. We'll  
10 get to that in just a moment.

11 MS. CASEY: And I'm going to ask  
12 the court reporter to read back to me from  
13 what he just testified. I would assume this  
14 is correct, could you please read that back  
15 to me?

16 MR. MARSHALL: Do you have an  
17 objection?

18 MS. CASEY: No. I want to  
19 hear -- I want it to be read back from the  
20 record.

21 MR. MARSHALL: For what purpose?

22 MS. CASEY: Because -- okay.

23 Mark it. I'll read it during the break.

1 Q (BY MS. SCHIFF:) Could the fact  
2 that Mr. Gavin was aware that Mr. Meeks  
3 possessed a firearm also have influenced his  
4 behavior?

5 A Well, sure. Again, you're  
6 talking about somebody living in an  
7 environment where there are people with  
8 firearms who are in control. And that's  
9 the -- that's the nature of a prison  
10 setting. And they give the orders and you  
11 comply.

12 Q What's your understanding of  
13 Mr. Meeks' educational history at the time  
14 that Mr. Gavin was released from prison?

15 A He I think was just short of  
16 having a college degree. That's what the  
17 documents suggested.

18 Q And how could the fact that  
19 Mr. Gavin was institutionalized affect his  
20 behavior with someone significantly more  
21 educated than himself?

22 A Again, there's a status  
23 differential between -- Mr. Gavin had gotten

1 his GED degree in -- in prison, but he  
2 had -- he had only taken a few college  
3 courses in prison and certainly was not  
4 anywhere near as well educated as  
5 Mr. Meeks. And so that would have enhanced  
6 the status difference between them.

7 Q And what is your understanding of  
8 Mr. Meeks' physique at the time Mr. Gavin  
9 was released from prison?

10 A Well --

11 MS. CASEY: Objection as to  
12 relevance.

13 A -- Mr. -- it's my understanding  
14 that Mr. Meeks was an ex-football player,  
15 was a weight lifter and was pretty  
16 physically imposing.

17 Q So, you would assume that he was  
18 significantly bigger than Mr. Gavin?

19 A Mr. Gavin --

20 MS. CASEY: Objection as to  
21 speculation, if you're going to ask him to  
22 assume.

23 Q So, Mr. Meeks was significantly

1 bigger than Mr. Gavin in your opinion?

2 MS. CASEY: Objection as to  
3 leading.

4 A Mr. Gavin in the documents is  
5 described as weighing about a hundred and  
6 forty-five pounds.

7 Q And what effect --

8 A So, there appears to have been a  
9 significant differential between them.

10 Q And what effect could that have  
11 on Mr. Gavin's institutionalization -- what  
12 effect did Mr. Gavin's institutionalization  
13 have on his behavior with someone who was  
14 significantly bigger than him?

15 A Well, again, this is a man who  
16 has learned how to -- learned how to comply  
17 and be concerned about issues of physical  
18 intimidation and has himself been in  
19 protective custody units because of his  
20 victimization. So, it would be a carryover  
21 into the free world.

22 Q And are you aware that Mr. Gavin  
23 testified at his Rule 32 hearing and in his

1 affidavit that he was being unduly  
2 influenced by Dewayne Meeks?

3 A Yes.

4 Q And that's consistent with  
5 institutionalization?

6 MS. CASEY: Objection as to  
7 leading.

8 A The potential to be influenced by  
9 others, particularly others with these kind  
10 of characteristics, particularly  
11 correctional officers, it is certainly  
12 consistent with institutionalization.

13 Q And in your view would this  
14 information have been relevant in the  
15 mitigation phase of Mr. Gavin's trial also?

16 A Yes, it would have been broadly  
17 relevant to explain his behavior generally  
18 and even specifically.

19 Q And in your opinion was there any  
20 other evidence of Mr. Gavin's institutional  
21 history -- I think you mentioned  
22 institutional failure. Do you believe that  
23 that should have been presented at the



1 mitigation phase of Mr. Gavin's trial?

2 A I do.

3 Q And what specifically -- what  
4 specific "evidence of institutional failure"  
5 could trial counsel have put before them?

6 A Well, the Illinois Department of  
7 Corrections had Keith Gavin in their custody  
8 for 17 years. And based on the records that  
9 I reviewed and my interview with Mr. Gavin,  
10 they do not appear to have done anything to  
11 deal with any underlying psychological  
12 issues or problems that he may have had.

13 Quite apart from any diagnosable  
14 mental disorders, there are a range of  
15 issues that prison systems understand are  
16 useful to deal with inmates about before  
17 they are released.

18 With respect, for example, to  
19 inmates who have engaged in a violent crime,  
20 things like anger management and so on,  
21 programs for prisoners to be given an  
22 opportunity to participate in. There were  
23 no such programs in the Illinois Department

1 of Corrections, and Mr. Gavin was not part  
2 of them.

3 He was not counseled by anyone.  
4 There was not a single therapeutic hour that  
5 I could see that he spent with anybody  
6 talking about the effects of these risk  
7 factors that we talked about earlier, the  
8 kinds of things that happened to him earlier  
9 in his life and so on. Those kinds of  
10 things were not addressed by anyone with him  
11 in the Department of Corrections.

12 In a more practical sense, he was  
13 not in any kind of significant or meaningful  
14 vocational training program that would have  
15 prepared him for a job in the outside world  
16 that was a career path for a 39-year-old man  
17 being released into free society.

18 MS. CASEY: Will you mark that,  
19 please?

20 Q (BY MS. SCHIFF:) Let's talk  
21 about his employment history while in  
22 prison. Based on your review, what kind of  
23 jobs did Mr. Gavin hold while -- while

1 incarcerated?

2 A Well, he held an enormous number  
3 of jobs, almost all of which with a very few  
4 exceptions were menial labor jobs, which  
5 would not have provided him with any  
6 particular vocational training or skills  
7 which he could have used as a means of  
8 acquiring any kind of significant or  
9 meaningful employment once he was released.

10 And I went through his  
11 institutional records and identified the  
12 various jobs which he held, many of which  
13 were jobs that he held for only a very short  
14 period of time, sometimes for a day.

15 What he describes and what is  
16 reflected in his records is that the  
17 institution put him to work when it needed  
18 something to be done, which is -- which  
19 makes perfect sense from an institutional  
20 perspective.

21 But from Mr. Gavin's perspective,  
22 he was not being provided with any  
23 long-term, consistent training that would

1 give him the skills with which he could  
2 obtain employment once he was released or  
3 indeed show a potential employer that he had  
4 these level of skills, that he obtained  
5 these certifications, et cetera.

6           There's no evidence of  
7 certifications of any kind except the GED,  
8 which he acquired. Not insignificant, but  
9 something he acquired near the end of the  
10 period he was incarcerated.

11           And here are the jobs that he  
12 worked starting from when he was in the --

13           MS. CASEY: I'm going to object  
14 as non-responsive at this time. There is no  
15 question before him to which he is  
16 testifying. He is simply just talking.

17           Now, if counsel would please put  
18 questions to the witness, I think we can  
19 move through this a lot quicker.

20 Q           (BY MS. SCHIEFF:) Dr. Haney, can  
21 you describe the jobs that Mr. Gavin held  
22 while in prison specifically?

23 A           Sure. He was --

1 MS. CASEY: I'm going to object  
2 as to relevance.

3 A He was a utility man, a janitor,  
4 a carpenter, a plumber, a utility man, a  
5 transit man, a utility man, a transit man, a  
6 janitor, a warehouseman in the general  
7 store, a clerk, a floor man in the dining  
8 room, a food cart man in the dining room, a  
9 transit man in the general store, a  
10 warehouseman in the general store, a floor  
11 man in the dining hall, a kitchen worker, a  
12 floor man in the kitchen, a cook, a transit  
13 man, a kitchen worker, a janitor, a  
14 plumber's helper, a labor pool worker, a  
15 janitor, a janitor in one wing, a janitor in  
16 another wing, a janitor in a third wing, a  
17 night worker in the south house, extra help  
18 in the dietary department, an operator in  
19 the data entry unit, a clerk in the library,  
20 a worker in the dietary department, a  
21 housing unit worker and a housing unit  
22 worker in another housing unit.

23 Q And in your opinion were those

1 considered mostly menial jobs?

2 A They were overwhelmingly so, and  
3 in addition, many of them held for only a  
4 very brief period of time.

5 Q And in your opinion would any of  
6 those jobs have prepared Mr. Gavin to gain  
7 meaningful employment upon release from  
8 prison?

9 MS. CASEY: Objection as to  
10 outside this witness' expertise. There's  
11 been no testimony as to whether or not or  
12 how he knows what meaningful employment is,  
13 how he makes that determination, how it  
14 would have been done back in 1999 or '98 --  
15 I mean, '97 when he was released. None of  
16 that information is on the record for this  
17 witness to make any type of conclusion such  
18 as that.

19 A No, none -- none of them in my  
20 opinion would have prepared him. He --  
21 there are prison vocational training  
22 programs where prisoners learn actual skills  
23 and get certificates, actually get certified

1 to do certain kinds of things. This is  
2 critically important.

3           Again, this is part of the work  
4 we did with the Department of Health and  
5 Human Services, and it's issues I've been  
6 looking at for a long time, what kind of  
7 prison rehabilitation programs help people  
8 to actually reintegrate into free society  
9 and get work.

10           This is -- this is in my opinion  
11 evidence of somebody who was moved hither  
12 and yon, willy-nilly around the prison  
13 system to do the jobs the prison needed,  
14 not -- there is no certificate. There's no  
15 vocational training program that he  
16 completed that he could have used to show an  
17 employer, a potential employer that despite  
18 being an ex-convict that he had learned  
19 particular skills in prison which would  
20 qualify him to do anything other than the  
21 kind of job for which anybody could compete,  
22 mainly the kind of menial labor jobs that he  
23 had been doing in prison.

1 Q Are you aware that Dr. King  
2 testified at the Rule 32 hearing that  
3 Mr. Gavin was employed the whole time he was  
4 in prison?

5 A Yes, I am.

6 Q And is that consistent with the  
7 records -- the Illinois Department of  
8 Correction records that you reviewed?

9 A That's significantly factually  
10 wrong. I have no idea how or why Dr. King  
11 would have asserted that. It's very clear  
12 from the prison records that he was -- he  
13 was employed about 10 percent of the time  
14 that he was in prison. The prison records  
15 show starting and ending dates of his  
16 employment.

17 So, these are jobs that are  
18 listed, but they are jobs that end at  
19 particular points in time. And then there's  
20 no jobs for months after that.

21 So, he was clearly not -- he was  
22 clearly not employed for most of the time  
23 that he was in prison, not just -- not was



1 pretty much consistently employed. Most of  
2 the time he was not employed and when he  
3 was, I just read you the kind of jobs he was  
4 employed in.

5 MS. CASEY: I'm going to ask that  
6 that be marked as an exhibit, if he's  
7 referring to it.

8 MS. SCHIFF: The prison records?

9 MS. CASEY: That -- well, mark it  
10 right now so that it can go in this  
11 deposition, what's been -- actually been  
12 discussed from it, or I can mark it on  
13 cross. I want that put in this deposition.  
14 Attach it as an exhibit to --

15 MS. SCHIFF: This (indicating)?

16 MS. CASEY: Whatever he just read  
17 off of.

18 MS. SCHIFF: Let's mark this as  
19 Defendant's Exhibit 12.

20 (Defendant's Exhibit No. 12  
21 was marked for identification.)

22 Q (BY MS. SCHIFF:) Is that one  
23 record of Mr. Gavin's employment from --

1 A Yes. It shows his housing and it  
2 shows his employment.

3 MS. CASEY: Can I see that,  
4 please?

5 MS. SCHIFF: (Indicating).

6 Q (BY MS. SCHIFF:) And based on  
7 your review of the records, did Mr. Gavin's  
8 educational experience in prison help  
9 prepare him to find gainful employment upon  
10 release?

11 A Yes and no. He obtained his  
12 GED. A couple of years before he was  
13 released from prison he obtained his GED.  
14 And that's not unimportant. But in -- it's  
15 not -- it's not a particularly -- it's not a  
16 particularly useful certificate to have  
17 in -- in the job market. I mean, it is  
18 obviously certification of the lowest level  
19 of academic achievement. And I'm not  
20 suggesting it's insignificant that he  
21 obtained it. I'm glad that he did.

22 But other than that, there were a  
23 few college courses that he took. You know,

1 I saw, for example, when he was released  
2 from prison -- right before he was released  
3 in 1996 he took a couple of courses. He was  
4 in a world issues course, political science  
5 and sociology. I think those are great  
6 courses to take. It's not clear to me how  
7 they would lead a man in his position to  
8 employment.

9 Q And when -- what year did  
10 Mr. Gavin receive his GED? I apologize if  
11 you already said that.

12 A I believe it was 1987. Let me  
13 see if I can -- oh, excuse me. No, it  
14 wasn't. It was 1993.

15 Q 1993. So, that was --

16 A It was a few years before he was  
17 released.

18 Q A few years before he was  
19 released. And do you believe that any --  
20 you mentioned a couple of college classes.  
21 Do you believe that those classes could  
22 prepare him to enter the free world upon  
23 release and find a job?

1 A Well, not the specific content of  
2 the classes that he -- I mean, again, these  
3 are fine courses and I'm glad he took them.  
4 But I'm not clear on how taking a class in  
5 sociology would lead to employment not given  
6 the situation he was in.

7 He had a long way to go, for  
8 example, for a college degree and that --  
9 and that would be something that would be  
10 useful to him clearly. So, this wasn't  
11 irrelevant, but it hardly prepared him once  
12 he got out for any kind of meaningful  
13 employment.

14 Q Now, are you aware at trial that  
15 Dr. King testified -- I mean, I'm sorry, are  
16 you aware that Dr. King testified at the  
17 Rule 32 hearing that Mr. Gavin was regularly  
18 taking college courses while incarcerated?

19 A Yeah.

20 Q And is that consistent with the  
21 review of his records?

22 A No, it's not at all. It's not at  
23 all consistent. There were a couple of

1 instances of him being enrolled in a college  
2 course even before he had gotten his GED.  
3 So, it's unclear what kind of a college  
4 course that was or what kind of -- what kind  
5 of benefit he would have obtained from  
6 sitting in on a college class even before he  
7 obtained a GED degree.

8 But the college courses that he  
9 participated in were few and far between.  
10 And the only -- the only actual ones that he  
11 participated in after he obtained his GED  
12 are the ones that I read to you.

13 Q And should this evidence of  
14 institutional failure that we just talked  
15 about have been presented to a jury during  
16 the mitigation phase of trial?

17 MS. CASEY: Objection as to --

18 Q In your opinion.

19 MS. CASEY: -- his opinion.

20 A Yes.

21 Q And in your experience what  
22 effect does evidence of institutional  
23 failure have upon capital jurors?

1 MS. CASEY: Objection.

2 Speculation as to any type of -- how this  
3 witness can testify as to what effect his  
4 testimony would have had on 12 jurors in  
5 Centre, Alabama 13 years ago -- or 12, 11  
6 years ago.

7 Q Based on your research -- have  
8 you done any research on the effect of  
9 evidence of institutional failure upon  
10 capital jurors?

11 A Again, these are some of the  
12 kinds of things that jurors find mitigating,  
13 an understanding of somebody's social and  
14 institutional history; including  
15 institutional failure is something that  
16 jurors in general find mitigating.

17 Q And we talked about the potential  
18 for future prison adjustment. Did you  
19 evaluate whether or not Mr. Gavin was a good  
20 candidate for future prison adjustment?

21 A Yes.

22 Q And what did you conclude?

23 A Oh, I concluded that he was,

1 certainly.

2 Q And why is that?

3 A Well, it was based on several  
4 things. One is that his overall  
5 institutional record in the Illinois  
6 Department of Corrections was very good.

7 So, we're talking about somebody  
8 who was in prison for 17 years and who has  
9 in my opinion one serious write-up, no  
10 violence where he initiates violence against  
11 another person in prison and no violence at  
12 all against correctional staff.

13 In addition to the general  
14 overall record, he's -- the pattern of  
15 institutional adjustment improved over  
16 time. You would expect that to be the case  
17 for reasons that I will mention in a second,  
18 but seeing that is the case is important.

19 So, this is a man who has learned  
20 how to live in an institutional environment,  
21 to adjust well in that environment, to adapt  
22 his conduct to the requirements of that  
23 environment and that, too, bodes well for

1 his ability to adjust in the future.

2           And the final factor is -- is his  
3 age. He is a person who is entering middle  
4 to older age in prison by prison society  
5 standards. There is a very reliable  
6 phenomenon identified in the criminological  
7 literature called Aging Out. And aging out  
8 occurs in terms of criminal behavior in the  
9 society at large and in terms of  
10 disciplinary infractions inside the prison  
11 itself.

12           So, the older people -- all other  
13 things being equal, the older somebody is  
14 the better a candidate they are for positive  
15 adjustment in an institutional setting  
16 because the assumption is they will have  
17 aged out.

18           Most of the disciplinary  
19 infractions that are engaged in in prison  
20 settings are engaged in by younger prisoners  
21 who are jostling for position and staking  
22 out their territory and establishing their  
23 reputations.



1 By the time somebody gets to be  
2 39 years old, those issues are behind them  
3 for the most part. And they're not only  
4 physically older and less able to  
5 participate in those activities, but they're  
6 also socially and emotionally more mature.  
7 And that process will be expected to  
8 continue over time.

9 Mr. Gavin looked like he was  
10 already in it, in that aging-out period  
11 while -- while he was institutionalized.

12 When he was in the Illinois  
13 Department of Corrections, I told you about  
14 his very good adjustment near the very end  
15 of that period, and you would expect that to  
16 be resumed once he went back into prison.

17 Q And in your opinion should trial  
18 counsel have presented evidence of  
19 Mr. Gavin's future prison adjustment?

20 A Yes.

21 Q And in your experience what  
22 effect does evidence of a defendant's likely  
23 prison adjustment have on a juror, on a

1 capital juror?

2 A Again, it's --

3 MS. CASEY: The same objections  
4 ongoing on this line of questioning as to  
5 speculation and completely irrelevant.

6 A It's an important mitigating  
7 effect. Jurors are often concerned about  
8 the future, what's going to happen with this  
9 guy if and when we send him to prison. And  
10 evidence to the effect that he's going to  
11 have a positive adjustment is important for  
12 them to be reassured of.

13 Q Have you written an article that  
14 concluded that capital jurors are less  
15 likely to sentence a defendant to death if  
16 they don't view them as a threat to society  
17 and the community?

18 A Yes.

19 Q And in your opinion should the  
20 jury have been aware of this in determining  
21 whether to sentence Mr. Gavin to life  
22 without parole or to sentence him to death,  
23 his potential for positive future prison

1 adjustment?

2 A Yes, of course. It's important  
3 to be reassured that this is a person who is  
4 going to go to prison and not be a threat to  
5 other people in prison, if that's the case,  
6 if that's true, and I believe in this case  
7 it was.

8 Q And have you done any research or  
9 written any articles on the effect of  
10 mitigation evidence on jurors generally?

11 A Yes.

12 Q What were those?

13 A Oh, I --

14 Q A couple of examples.

15 A I supervised several  
16 dissertations in which my graduate students  
17 and I interviewed capital jurors about what  
18 was important to them. I also have done  
19 surveys, statewide surveys in which jurors  
20 have been asked questions -- potential  
21 jurors have been asked questions, persons  
22 who are eligible to be jurors have been  
23 asked questions about what kind of things

1 they find mitigating and aggravating.

2 And those -- those two kinds of  
3 studies were synthesized in a couple of  
4 papers, one in the Santa Clara Law Review  
5 and another that was published in the  
6 Stanford Law Review.

7 Q And did you rely on those  
8 articles -- you mentioned the Santa Clara  
9 and the Stanford Law Review articles -- in  
10 reaching your opinions in this case?

11 A Yes.

12 Q And were they referenced in your  
13 declaration?

14 A Yes.

15 MS. SCHIFF: I would like to  
16 submit these as Defendant's Exhibits 13 and  
17 14.

18 MS. CASEY: Objection as to  
19 hearsay. Any type of article outside of  
20 the -- that he wrote is completely  
21 irrelevant. If she wants to refer to  
22 certain sections -- assuming in this case he  
23 didn't just cut and paste it into his report

1 like he usually does, then that might be  
2 different.

3 But if you're going to discuss --  
4 if we're going to discuss those full  
5 articles, I'm going to object to them  
6 because they're hearsay unless you can show  
7 me where in the article they're referred to  
8 and the specific sections that he's going to  
9 testify to.

10 MS. SCHIFF: Would you like a  
11 copy?

12 MS. CASEY: Then I'm going to  
13 want to take an hour or two to sit there and  
14 read it.

15 MS. SCHIFF: I was just wondering  
16 if you would like a copy.

17 MS. CASEY: Okay. We're going to  
18 have to go into break then.

19 (Defendant's Exhibit Nos. 13 and  
20 14 were marked for  
21 identification.)

22 Q (BY MS. SCHIFF:) What's just  
23 been marked as Defendant's Exhibit Number

1 13, is this the article that you wrote  
2 entitled "Violence and the Capital Jury"?

3 MS. CASEY: May I put on the  
4 record that Counsel has just given me one  
5 article that's 41 pages long and another  
6 article that's 41 pages long that she's  
7 attempting to introduce into evidence. And  
8 the State may have an ongoing -- a request  
9 to have Dr. Haney redeposed once she has had  
10 time to read these articles.

11 And in that case, the State would  
12 put another motion before the Court as to  
13 any type of expenses or time issues  
14 concerning having Dr. Haney brought back to  
15 Alabama to be deposed on those two articles.

16 MR. MARSHALL: Well, I think we  
17 should respond to that.

18 These are articles that are  
19 referenced in the witness' CV as well as the  
20 witness' report.

21 MS. CASEY: I agree.

22 MR. MARSHALL: So, your lack of  
23 preparation would not be a valid ground for

1 seeking costs, and we will object to your  
2 attempt to reopen the deposition.

3 MS. CASEY: And let me just let  
4 the Court also know that defense counsel has  
5 not attempted to submit the other 31  
6 different other articles that have been  
7 submitted. And it's kind of -- Counsel is  
8 wondering why it's relevant that these two  
9 law articles be introduced into evidence on  
10 the record.

11 MR. MARSHALL: That would be a  
12 perfectly appropriate subject of  
13 cross-examination. I'm sure you have all  
14 the articles. You certainly have access to  
15 them. You've had access to them for months,  
16 if not years.

17 MS. CASEY: I am not disagreeing  
18 with you. Putting them into the record is a  
19 different story.

20 MR. MARSHALL: You're entitled to  
21 do that.

22 MS. CASEY: Fine. I'm not going  
23 to argue with you right now, Hank. I'm

1 putting it on the record.

2 MR. MARSHALL: Me, too.

3 Q (BY MS. SCHIFF:) In your view  
4 and based on these articles, why is evidence  
5 of a defendant's institutional history  
6 generally relevant to mitigation?

7 A Well, because it's part of  
8 somebody's social history, first of all, and  
9 social history is clearly relevant to  
10 mitigation. It's in many ways the  
11 centerpiece of defending cases in  
12 mitigation.

13 And secondly, it's particularly  
14 important because, as I described earlier,  
15 that these are things about which many  
16 juries are unfamiliar. And so learning  
17 about the dynamics of institutional life and  
18 how people are affected by those dynamics is  
19 quite important.

20 Q So, because jurors have  
21 misconceptions of this, expert testimony is  
22 particularly important on the subject?

23 A They either have no knowledge or



1 the knowledge that they have is often times  
2 erroneous. So, providing an accurate  
3 description of the way things work inside a  
4 prison and how people are affected by those  
5 things is important.

6 Q Are you aware that the State's  
7 expert, Dr. King opined that your  
8 declaration holds the Illinois Department of  
9 Corrections responsible for Mr. Gavin's  
10 alleged criminal behavior rather than  
11 holding Mr. Gavin himself responsible?

12 A Yes.

13 Q And how would you respond to  
14 that?

15 A Well, first of all, clearly  
16 Mr. Gavin and not the Illinois Department of  
17 Corrections was on trial. So, nobody was  
18 being held legally responsible for Mr. Gavin  
19 but Mr. Gavin.

20 But talking about things that  
21 helped to influence somebody, talking about  
22 forces and factors in somebody's life that  
23 have shaped their life and have shaped them

1 and have influenced or affected their  
2 behavior is the essence of mitigation.

3 It's not saying someone else is  
4 responsible. It is explaining the  
5 defendant's behavior in the context of that  
6 defendant's past history including their  
7 past institutional history.

8 That's what mitigation is. It  
9 doesn't hold anybody else responsible for  
10 what the defendant has done, but it puts the  
11 defendant's behavior in a context that  
12 allows the jury to understand it and in the  
13 appropriate case to reach a decision to  
14 sentence them to life rather than death  
15 because they understand the forces that have  
16 helped to shape the defendant and influence  
17 what he's done.

18 Q And was any of the mitigation  
19 evidence that we've discussed today  
20 presented at Mr. Gavin's sentencing hearing?

21 A No.

22 Q And in your view was the jury  
23 given any insight into Mr. Gavin's life in

1 prison and the effect that it had on him?

2 A No, of course not.

3 Q And were they given any insight  
4 into the institutional failure of the  
5 Illinois Department of Corrections to  
6 provide him with training or counseling  
7 services?

8 A None.

9 Q And were they given any insight  
10 into Mr. Gavin's potential for positive  
11 future adjustment at his original trial?

12 A None.

13 Q And you obtained all of this  
14 evidence primarily through reviewing  
15 Mr. Gavin's prison records and interviewing  
16 Mr. Gavin, correct?

17 A The information I've testified to  
18 about his institutional history?

19 Q Yes.

20 A Yes.

21 Q And do you have any reason to  
22 believe that this information was not  
23 available at the time of Mr. Gavin's

1 original trial in 1999?

2 A Well, no. I mean, quite the  
3 opposite. I'm sure it was available because  
4 these records were generated at a much  
5 earlier point in time. These were -- these  
6 are records -- the end date on the records  
7 is 1997 when he was released from prison.

8 Q And if you would have testified  
9 at that original trial, you would have told  
10 the jury about all of these issues, correct?

11 MS. CASEY: Objection as to  
12 leading.

13 A Yes.

14 Q Now I would like to talk a little  
15 bit about your prior involvement in this  
16 case.

17 Prior to Mr. Gavin's prior trial  
18 counsel contacting you in May 2007 regarding  
19 this Rule 32 petition, were you previously  
20 aware of Mr. Gavin?

21 A I was.

22 Q And how?

23 A I was contacted by an Alabama

1 mitigation investigator named Lucia Penland.

2 Q And had you ever worked with  
3 Ms. Penland before?

4 A I had and not -- not in -- not  
5 with respect to an Alabama case, but a case  
6 in California which involved a young man who  
7 had grown up in Alabama. And she -- I --  
8 she was a local person in Alabama who was  
9 familiar with the Alabama prison system.  
10 She worked I believe for the Alabama Prison  
11 Project.

12 And so I met her in that context,  
13 and she worked with -- with me and several  
14 other people. I wasn't the only person she  
15 worked with. There were some lawyers and  
16 someone back here who she worked with as  
17 well.

18 Q And what was your understanding  
19 of why Ms. Penland originally contacted you  
20 about this case?

21 A Well, I learned from e-mails that  
22 you -- copies of e-mails that had been  
23 exchanged between her and me -- I had

1 forgotten that she had called me in April of  
2 1999 apparently about this case. I don't  
3 even remember if she mentioned the name of  
4 the case. And I -- it was a very brief  
5 contact, and I don't remember having talked  
6 to her about any of the specifics of the  
7 case. She may have asked me for a CV or  
8 something. I don't know.

9           And then she contacted me again  
10 in October to say that the case was about to  
11 go to trial and asking if I could work on  
12 the case. And at that point I had to  
13 decline.

14           But that was the -- that was the  
15 first time I -- I remembered at least that I  
16 had talked to her about this particular  
17 case. As I say, it turns out that she had  
18 called me earlier in April about the same  
19 case, but I didn't realize that.

20 Q           So, in April 1999, you didn't  
21 agree to assist on Mr. Gavin's case when she  
22 contacted you?

23 A           No. I didn't have anything to

1 assist on. I think it was a very brief  
2 contact and I said if there are -- I would  
3 have said what I always say, which is, you  
4 know, if there are materials that you want  
5 me to review, I'm willing to try to do that  
6 time permitting, but let me know.

7 At that point it was very, very  
8 vague. As I say, too vague for me even to  
9 remember what she would have talked to me  
10 about. And then there was no activity on  
11 the case at least between Ms. Penland and  
12 I. I don't know what else was going on,  
13 but -- until -- the next time I heard from  
14 her was in October of 1999.

15 Q And you mentioned Ms. Penland  
16 didn't contact you after April '99 when she  
17 briefly asked you if you might be interested  
18 in working on the case. Did anyone ever  
19 contact you from -- did Mr. Gavin's trial  
20 counsel ever contact you?

21 A No, absolutely not. No one -- no  
22 one associated with this case ever contacted  
23 me.

1 Q And did Mr. Gavin's trial counsel  
2 ever contact you?

3 A Never. I didn't know Mr. Gavin's  
4 trial counsel's name until you contacted --  
5 your office contacted me years later.

6 Q So, in October 1999 when  
7 Ms. Penland contacted you again, you  
8 mentioned that you declined to -- you said  
9 that you weren't able to testify on  
10 Mr. Gavin's behalf. Why not?

11 A Well, there were a couple of  
12 reasons. One is that I -- that it was --  
13 the trial was about to commence. This was  
14 in October of 1999. It was in the middle of  
15 a school term. It was far too short. In  
16 other words, I could not possibly get ready.

17 But much more importantly, I had  
18 no idea what my -- what my opinions would  
19 be. I had seen not a single document with  
20 respect to the case. I couldn't possibly  
21 commit to doing testimony in a case that I  
22 hadn't received and reviewed no documents  
23 in. I had no idea what it is they wanted me



1 to talk about or testify to.

2           The -- and I asked about prison  
3 records. Ms. Penland indicated to me that  
4 the client -- her client had been in prison  
5 for 17 years. And I asked whether or not  
6 they had prison records available, and she  
7 said that they didn't, that they hadn't  
8 obtained prison records.

9           And at that point it was clear to  
10 me that I couldn't possibly -- I couldn't  
11 possibly participate in the case. There was  
12 nowhere near enough time or nowhere near  
13 enough information.

14 Q           Generally how long would it take  
15 to conduct a proper analysis in your  
16 experience after you get the records?

17 A           Well, it would take -- it would  
18 take months to -- I mean, you need to get  
19 the records, first of all. And then you  
20 need to look carefully at the records. And  
21 there are hours involved in that, 10 to 15  
22 hours. It would depend on how many -- how  
23 voluminous the files were. And then you

1 would typically need to interview the  
2 client.

3           And so there -- and maybe --  
4 maybe more than once, but maybe not  
5 depending upon how much information was in  
6 the files. And you have -- you have to also  
7 discuss what -- what kind of -- what kind of  
8 testimony you were being expected or  
9 anticipated to -- to present.

10           And none of those discussions  
11 had -- had taken place. And this is --  
12 particularly in a case where the records  
13 have not yet been obtained, this is often  
14 times a very time-consuming process because  
15 getting -- getting prison records is a  
16 complicated business sometimes. It requires  
17 the cooperation of the Department of  
18 Corrections. They're not always eager to  
19 leap to the task.

20           And so not having those records  
21 in hand suggested to me that this was  
22 probably -- we were probably looking at  
23 months before we got the records, I and

1 perhaps somebody else had a chance to look  
2 at the records, I had a chance to interview  
3 the client, formulate an opinion. This  
4 could not be done from my --

5 Q So, you didn't review any of the  
6 prison records in preparation for the  
7 original trial in this case?

8 A I never -- I was never sent a  
9 single piece of paper, let alone a prison  
10 record.

11 Q And based on your review of the  
12 documents in this case, is there any  
13 indication that trial counsel ever even  
14 requested Mr. Gavin's prison records?

15 A Well, I saw no indication of it,  
16 none in any of the files that you sent me  
17 and not in any of the materials that you  
18 sent me. And I was told by Ms. Penland --

19 MS. CASEY: Objection. Hearsay.

20 A -- that they had not -- that they  
21 didn't have them. Now, I don't know whether  
22 they had been requested or not.

23 Q And that was in October of 1999?

1 A Yes.

2 Q So, as of October 1999, there was  
3 no indication that Ms. Penland had ever seen  
4 Mr. Gavin's Illinois Department of  
5 Correction records?

6 A Well, based on what she told me,  
7 I was sure she hadn't. She said they didn't  
8 have them.

9 Q And why is this significant in  
10 your opinion?

11 MS. CASEY: Objection.

12 A Well, again, we're talking  
13 about -- this is a significant 17-year  
14 period of her client's life, his entire  
15 adult life essentially behind bars. And the  
16 record of that is contained in the  
17 institutional or prison files from the  
18 Illinois Department of Corrections.

19 It's fundamental to understanding  
20 the client, understanding his social and  
21 institutional history, understanding his  
22 behavior once he was released from prison,  
23 fundamentally.

1 Q And whose responsibility is it to  
2 subpoena prison records?

3 A The attorney's.

4 Q And in your experience working  
5 with defense counsel on capital cases is  
6 counsel usually aware that it's their  
7 responsibility to do so?

8 MS. CASEY: Objection. This is  
9 now outside the scope of -- this is --

10 Q Based on your experience.

11 A On every legal team that I've  
12 been involved with or connected to, the --  
13 in a capital case the attorneys are the  
14 people who direct these activities.

15 Q And is that usually done  
16 immediately because it takes so long to  
17 subpoena those records?

18 MS. CASEY: Objection. Lack of  
19 foundation that there's been any testimony  
20 that there was a long amount of time to  
21 subpoena records.

22 Q You mentioned that it takes a  
23 significant amount of time to get past

1 prison records. In your experience working  
2 with defense counsel, are those records  
3 usually requested immediately because of  
4 that?

5 MS. CASEY: Objection. There's  
6 been no testimony that in this case there  
7 was a long amount of time in order to  
8 subpoena records.

9 A Yes. It's often times said in  
10 literature, which is produced about how to  
11 do capital mitigation investigation, first  
12 get the records, get all the records.  
13 That's the first thing you do. And in  
14 particular it's the first thing you do in  
15 the case of prison cases because, as I said  
16 earlier, it takes typically so long to get  
17 them.

18 Q And did Mr. Gavin's trial counsel  
19 ever contact you about setting up an  
20 interview with Mr. Gavin?

21 A No.

22 Q And in your experience who is  
23 responsible for setting up the interview

1 between you and a client?

2 A Well, the attorney has to do it,  
3 has to provide the legal authorization,  
4 indicate and certify to the prison system  
5 that I'm coming in as an agent of the  
6 attorney and need to be afforded an  
7 opportunity to do a legal interview.

8 Q So, in this case if you -- if  
9 Bayne Smith wanted you to work on this case,  
10 you would have expected him to set up an  
11 interview with -- between you and Mr. Gavin,  
12 correct?

13 A Among other things, I would have  
14 expected him to talk to me, which he never  
15 did, but certainly also to talk to the  
16 prison to set up an interview.

17 Q And to your knowledge, did Lucia  
18 Penland or anyone else on the defense team  
19 try to arrange an interview between you and  
20 Mr. Gavin?

21 A Not to my knowledge.

22 Q Would you have been able to  
23 assist with this case under other

1 circumstances, if you had had more time?

2 MS. CASEY: Objection as to form  
3 as to what other circumstances are.

4 Q You mentioned that you weren't  
5 able to assist with the case in October of  
6 1999 because you didn't feel that there was  
7 sufficient time and you hadn't seen any  
8 records and you hadn't -- no one had tried  
9 to set up an interview with you. If all of  
10 those things had happened, would you have  
11 been able to assist with this case?

12 A Yes. I mean, I -- pending some  
13 unforeseen circumstance, of course. I can't  
14 imagine why I wouldn't have.

15 Q And had you testified, you would  
16 have talked about all the issues related to  
17 Mr. Gavin's institutional history that we  
18 have discussed today, correct?

19 A Yes.

20 MS. CASEY: I would like to take  
21 a break.

22 MR. MARSHALL: Okay.

23 (A break was taken at 12:23 p.m.)



1 and the deposition resumed at

2 1:01 p.m.)

3 EXAMINATION BY MS. CASEY:

4 Q Dr. Haney, I'm Pamela Casey with  
5 the Attorney General's office. I'm going to  
6 be asking you several questions. If at any  
7 point you don't understand my question, just  
8 feel free to ask -- or ask me to restate it  
9 so we can make sure that we're on the same  
10 page about a question. All right?

11 A Good.

12 Q Let me just -- I'm going to have  
13 to jump around because I want to cover  
14 several things that Ms. Schiff talked to you  
15 about, and then I'll have some questions  
16 that I personally want to get into in  
17 relation to the State's case or State's  
18 response.

19 What is your personal opinion on  
20 the death penalty?

21 A I'm personally opposed to the  
22 death penalty.

23 Q So, you're opposed to the death

1 penalty; is that correct?

2 A Yes, that's what I just said.

3 Q And actually, you've stated that  
4 to several media outlets, haven't you?

5 A I'm not sure I have.

6 Q You've never talked to the Los  
7 Angeles Times about your opinions on the  
8 death penalty and your opposition to the  
9 death penalty?

10 A I'm not sure I have. I don't  
11 recall.

12 MS. CASEY: Can I mark this as  
13 State's 101?

14 (State's Exhibit No. 101  
15 was marked for identification.)

16 Q (BY MS. CASEY:) I'm going to  
17 show you an interview that apparently you  
18 did in September of last year with Carol  
19 Williams. And this is your name at the  
20 bottom. The professor queried several  
21 Californians, yada, yada and asked if he had  
22 a personal opinion about the death penalty.  
23 He said his 30 years of work in the field

1 had led him to the conclusion that capital  
2 punishment is unnecessary and cannot be  
3 properly, fairly or effectively implemented.

4 A Yes.

5 Q Do you recall now having  
6 conversations -- or stating your opinion  
7 concerning the death penalty to the media?

8 A Yes, I did in this particular  
9 context in that way.

10 Q So, it's your opinion that never  
11 put anyone to death as a result of their  
12 crime?

13 A Yes, that's my opinion.

14 Q Regardless of the crime they  
15 committed?

16 A That's correct.

17 Q You are not actually licensed to  
18 practice law, are you?

19 A No, I am not a lawyer, have never  
20 been.

21 Q Did you ever sit for the bar  
22 exam?

23 A Never.

1 Q Never in California, nowhere else  
2 in the country?

3 A No, never anywhere.

4 Q You had indicated that you worked  
5 on several capital cases; is that right, as  
6 a defense expert?

7 A More than several. I have worked  
8 on a number of them.

9 Q Approximately how many? And let  
10 me -- let me just clarify this so that it  
11 will make your answer easier. I'm talking  
12 about capital murder or capital punishment  
13 cases where it's State versus defendant.

14 A And worked on? Not testified in  
15 but worked on?

16 Q Well, we'll break it down. Let's  
17 start with worked on.

18 A I don't know. I mean, there have  
19 been -- there have been many of them and  
20 they're in varying capacities. I am often  
21 times asked to review files, to give an  
22 opinion about something. It happens very  
23 often. I don't have any idea how many

1 times.

2 Q More than a hundred?

3 A Probably.

4 Q More than 200?

5 A I wouldn't think so.

6 Q So, between a hundred and 200  
7 cases that you've either consulted on or  
8 actually maybe testified in?

9 A Well, it's certainly not a  
10 hundred that I've -- between a hundred and  
11 200 that I've testified in, but where  
12 people -- over the course of 30 some years  
13 doing this kind of work it could certainly  
14 be over a hundred.

15 Q How many cases have you testified  
16 in, capital murder cases where you have  
17 actually gone and testified in court?

18 A Again, an estimate, I would think  
19 maybe in the neighborhood of -- capital  
20 cases?

21 Q Capital murder cases where the  
22 defendant is subject to the death penalty.

23 A I would just estimate 40, 50,

1 something like that.

2 Q In what states have those been?

3 A Most of them in California. In  
4 New Mexico.

5 Q Where else?

6 A Oregon, Florida. That might be  
7 it.

8 Q Isn't it true that you were  
9 actually hired to testify in an Alabama  
10 death penalty case approximately 10 years  
11 ago?

12 A Yes.

13 Q And in that case, isn't it true,  
14 that the Court failed to find you as an  
15 expert, failed to determine that you were an  
16 expert?

17 A No, I don't believe that's  
18 correct.

19 Q You weren't allowed to testify in  
20 front of the jury, were you?

21 A But not for that reason.

22 Q How many sentencing phases have  
23 you testified in where you've got guilt

1 phase, then you've got punishment phase?

2 A Almost virtually all of the  
3 testimony that I give -- not literally all  
4 of it, but most -- almost all of it is in  
5 the sentencing phase.

6 Q And of those 40 to 50, have all  
7 of those been -- your testimony been for the  
8 defendant?

9 A Yes.

10 Q You have never testified on  
11 behalf of the State?

12 A In a capital case, no.

13 Q At what point did you become  
14 employed by Sidley Austin in this case?

15 A I don't remember the exact date.  
16 It's sometime in 2007. I don't recall  
17 exactly when.

18 Q Did you enter into a contract  
19 with them?

20 A They sent me a letter, yes,  
21 retaining me.

22 Q And what are the terms of the  
23 contract?

1 A That I would be compensated at an  
2 hourly rate of a hundred and fifty  
3 dollars -- or excuse me. \$195 an hour; that  
4 I would, as I recall, I think be compensated  
5 for reasonable travel expenses. And I  
6 believe they contracted with me for -- there  
7 was an hour -- number of hours. I think it  
8 might have been 50 hours.

9 Q How many hours have you worked on  
10 this case?

11 A I think about 50 hours.

12 Q And does your testimony time  
13 here -- do you get paid more for that per  
14 hour --

15 A No.

16 Q -- than you do for review?

17 A No.

18 Q How many hours did you spend  
19 reviewing the documents in this case?

20 A I'm going to estimate 15 or so  
21 hours. I'm not sure. And that was -- that  
22 was the initial time and then there was some  
23 subsequent time. There have been additional



1 documents. Somewhere around 15.

2 Q And everything you reviewed you  
3 got from Sidley Austin?

4 A Oh, sure. I didn't have any  
5 other file in the case.

6 Q And that was his entire  
7 Department of Corrections' file?

8 A Yes.

9 Q His parole and prison review  
10 board trial?

11 A File, yes.

12 Q File. I'm sorry. The transcript  
13 from both phases of his capital murder  
14 trial?

15 A Yes.

16 Q And you read -- and the  
17 declaration submitted by Paramore,  
18 Dr. Paramore?

19 A Correct.

20 Q And that's it?

21 A And then there was -- then there  
22 was additional information that was  
23 provided, these -- the hearing, the most

1 recent hearing testimony.

2 Q And you reviewed that whole  
3 transcript?

4 A I don't -- I don't know that I --  
5 I don't know that I reviewed the whole  
6 transcript. I reviewed -- certainly  
7 reviewed Mr. Gavin's testimony,  
8 Dr. Paramore's testimony, Lucia Penland's  
9 testimony, Dr. King's testimony. That  
10 probably was it. There may have been -- and  
11 probably the -- some of the introductory  
12 materials just to get to the testimony.

13 Q So, you spent 15 hours reviewing  
14 all of that?

15 A Well, I don't know. I mean, you  
16 asked for me an estimate. That was my best  
17 estimate. It's not a precise estimate.

18 Q What have you been doing the  
19 last -- the other 35 hours what did you do?

20 A Well, I came out here and  
21 interviewed Mr. Gavin. I spent some time  
22 then reanalyzing the records, going back  
23 based on what he told me looking at his

1 prison file.

2 I spent some time doing  
3 calculations of where he was and when he was  
4 in the prison file, exact -- exact dates and  
5 times of where things were so I could get a  
6 clearer picture in my head about where --  
7 which particular prisons he was in.

8 I looked at which -- I tried to  
9 match up which prisons he was in with where  
10 he was in various kinds of activities. So,  
11 I went back and reanalyzed the prison file  
12 with those things in mind.

13 Q Now, let's talk about your  
14 interview with Keith Gavin. What date was  
15 that?

16 A It was in August of 2007.

17 Q And did you fly here from  
18 California I would assume?

19 A Uh-huh, yes.

20 Q And you met with him at Holman  
21 Prison?

22 A I did.

23 Q Where did you meet with him at at

1 Holman?

2 A In the arch interview area in the  
3 center of the prison.

4 Q Where the snack machines and  
5 stuff are, the tables with the different  
6 chairs?

7 A Yeah, the big tables and there's  
8 a fan there.

9 Q How long did you meet with him?

10 A I -- probably three or four  
11 hours, something like that.

12 Q Did you take any paper or a pen  
13 with you when met and talked with him?

14 A Yes.

15 Q Did you take notes?

16 A Yes.

17 Q Have you provided those notes to  
18 Sidley Austin?

19 A No.

20 Q Have they requested those notes  
21 from you?

22 A No.

23 Q Did you bring those notes with

1 you today?

2 A No.

3 Q Approximately how many notes or  
4 the volume of notes did you take during that  
5 time?

6 A I use a little note pad, a little  
7 stenographer pad, which probably I would say  
8 was 25 or so pages.

9 Q And you don't recall whether it  
10 was three or four hours that you met with  
11 him?

12 A No. That's a good estimate I  
13 would think.

14 Q How much did you bill?

15 A I don't recall.

16 Q Did you ever talk to Betty  
17 Paramore in person?

18 A No.

19 Q Did you ever talk to any of  
20 Mr. Gavin's counsel, trial counsel in  
21 preparing this report?

22 A No.

23 Q Are you even aware of who

1 Mr. Gavin's trial counsel is?

2 A I recall one of his counsel's  
3 name is Bayne Smith. I don't recall the  
4 other gentleman's name. And Mr. Smith I  
5 understand is deceased.

6 Q And where did you learn that  
7 information from?

8 A I believe from present counsel.  
9 It may have been referred to in the  
10 transcript material that I read.

11 Q Let's see where we want to go  
12 next. You testified earlier that -- let's  
13 break this into two different -- or three  
14 different sections.

15 Let's talk about your contact,  
16 first of all, with defense attorney -- or  
17 defense back in 1998, '99. You submitted a  
18 report in this case, right?

19 A I did.

20 Q And in that report you indicated  
21 that you never heard from -- the first time  
22 you had contact with Ms. Penland was  
23 actually in October of 1999, correct?

1 A The first time I had contact with  
2 her in conjunction with this case.

3 Q That's what you put in your  
4 report?

5 A That's what I believed, yes.

6 Q But subsequently you've learned  
7 that you actually had spoken to her prior to  
8 October of 1999 in regard to this case?

9 A That's right.

10 Q You had actually exchanged  
11 e-mails?

12 A Yes.

13 Q And in those e-mails you  
14 indicated that -- that if you get a  
15 continuance that it would -- you would work  
16 on the case?

17 A Yes.

18 Q And are you aware that she got a  
19 continuance in this case, there was a  
20 continuance issued at that time?

21 A I became aware of it in October  
22 when she contacted me again and said that  
23 they had gotten a continuance and that they

1 were now about to go into trial.

2 Q And that she said that she --  
3 excuse me. You told her you could mail or  
4 fax a current CV?

5 A Yes.

6 Q Do you recall whether or not you  
7 did that?

8 A I would assume I did if she  
9 requested it, yes.

10 Q But you don't recall anything  
11 about talking to her in April of 1999?

12 A I don't recall anything about  
13 this particular case, no. I mean, I don't  
14 even know if she mentioned the name of this  
15 case or if she mentioned anything about the  
16 case. You know, this is many years ago and  
17 obviously I don't -- I don't -- it was not a  
18 particularly in-depth or substantive  
19 conversation. And then there was no  
20 follow-up.

21 So, I wouldn't have had any  
22 reason to connect the October phone call to  
23 any -- to this particular case until it was



1 pointed out to me by her that -- by her --  
2 by the e-mails that that was what had  
3 happened.

4 Q And isn't it true that  
5 Mr. Gavin's defense counsel could have made  
6 a calculated decision not to hire you?

7 A I don't know what that would have  
8 been based on, but I have no reason to know  
9 or believe anything about whether any  
10 decision was made with respect to me.

11 Q Isn't it true that it's possible  
12 that they could have decided not to hire  
13 you?

14 A Anything is possible. I have no  
15 idea. They -- you will recall that they  
16 contacted me again in October. So, if there  
17 was a --

18 Q Their defense attorney didn't.

19 A Well, I understood when  
20 Ms. Penland contacted me that she was  
21 contacting me at the request of the  
22 attorney, but I'm not -- I can't of course  
23 say for sure since I had no contact with the

1 attorney at any point in time.

2 Q So, you think that Ms. Penland  
3 contacted you at the request or -- at the  
4 request of the attorney?

5 A Well, I would have -- I'm  
6 assuming that's the case because she was  
7 asking me if I could participate in a trial  
8 that was about to begin. And I would have  
9 just been assuming that she wouldn't have  
10 done that without some conversation with the  
11 attorney. I can't be certain, of course.

12 Q And you can't be certain that --  
13 well, let me ask it like this: The e-mail  
14 exchange that you and Ms. Penland had -- and  
15 you actually discussed the attorneys, did  
16 you not?

17 A The attorneys in this case?

18 Q Yes.

19 A I -- well, I didn't know anything  
20 about them. I discussed the behavior of the  
21 attorneys, what I --

22 MS. SCHIFF: Can you clarify  
23 which e-mail you're talking about?

1 MS. CASEY: GG, Exhibit E.

2 Q (BY MS. CASEY:) But actually at  
3 that point you had never even spoken to the  
4 attorneys, had you?

5 A No, at that point they had never  
6 bothered to call me.

7 Q And that could have been a  
8 decision that they made?

9 A It -- it could have been.

10 Q And they could have decided not  
11 to present any evidence of  
12 institutionalization, couldn't they have?

13 A Yes, they could have based on  
14 very little information because they didn't  
15 even have his prison file. But they could  
16 have.

17 Q You don't know what they had, do  
18 you?

19 A Well, I was told that they didn't  
20 have his prison file.

21 Q You do not know what they had, do  
22 you?

23 A I only know what Ms. Penland told

1 me.

2 Q So, that's a yes to my question  
3 that you don't know what they had?

4 A No, only as she -- only as she  
5 represented it.

6 Q Never went to their office and  
7 looked in their files?

8 A Never even knew who they were.  
9 They never called me.

10 Q So, they could have made a  
11 decision not to hire you?

12 A Anything is possible.

13 Q Have you ever been to Centre,  
14 Alabama?

15 A No.

16 Q Have you ever been to Cherokee  
17 County, Alabama?

18 A I don't believe so.

19 Q Do you know anything about the  
20 people that live there?

21 A Anything about the people who  
22 live there?

23 Q Potential jurors, the jurors. Do

1 you know anything about the people, the  
2 makeup of that community?

3 A I've never been there, as far as  
4 I know.

5 Q You're aware that Mr. Smith and  
6 Mr. Ufford are from that area, correct?

7 A Yes, I believe that's the case.

8 Q And understand the people of  
9 their community?

10 A I don't know that to be true.

11 Q And let me just clarify so I  
12 understand what Ms. Schiff asked you earlier  
13 is that you believe that the defense  
14 attorney should have put into evidence the  
15 fact that -- at sentencing the fact that  
16 Mr. Gavin had killed someone previously 17  
17 years ago, gone to prison, got into fights  
18 while he was in prison, was transferred all  
19 the time while he was in prison, he should  
20 have put that information into a -- before  
21 an Alabama -- Centre, Alabama jury in the  
22 sentencing phase?

23 A Well, first of all, part of that

1 was already in front of the Alabama jury.

2 The fact that he had killed somebody and  
3 gone to prison for 17 years was already in  
4 front of them. They knew that.

5 What he should have done -- what  
6 in my opinion --

7 Q Listen, I appreciate -- my  
8 question was a yes or no question.

9 MR. MARSHALL: Let him answer the  
10 question.

11 Q And if she wants to follow up --

12 MR. MARSHALL: Let him answer the  
13 question.

14 Q Yes or no, you believe --

15 MR. MARSHALL: Let him answer the  
16 question. You've asked an open-ended  
17 question.

18 MS. CASEY: It wasn't open ended,  
19 Hank. And I'm not going to fight with you.

20 Q (BY MS. CASEY:) Then I'll  
21 withdraw the question, and I'll ask it  
22 again.

23 Yes or no, you believe that the

1 defense attorneys of Keith Gavin should have  
2 put before a jury the fact that he had been  
3 in prison for 17 years, had gotten into  
4 fights and I believe, as a record you  
5 referred to, had over 60 disciplinaries  
6 while he was in prison and that after  
7 getting out, three or four months later  
8 killed another person, that that information  
9 should have been in front of a jury? Yes or  
10 no?

11 A That's not the only information  
12 that should have been put in front of the  
13 jury. Some of that was already in front of  
14 the jury. And what was lacking was a  
15 context for all that information, and that  
16 should have been put in front of the jury.

17 Q And I appreciate that, but I'm  
18 going to take you right back to the yes or  
19 no question. It's your opinion in front of  
20 a Centre, Alabama jury that these defense  
21 attorneys should have put in all these  
22 problems, disciplinaries, the fact he was in  
23 prison for 17 years, the issues he had in

1 prison, that that should have gone in front  
2 of the jury at sentencing?

3 A And I will take you right back to  
4 my answer, which is that that's not all they  
5 should have put in front of the jury.

6 Q And I understand you're saying  
7 that. I'm just asking yes or no should that  
8 have gone in front of them.

9 A But I just answered it.

10 MR. MARSHALL: He has answered  
11 the question.

12 A I just answered it for you.

13 Q Yes or no?

14 A I just answered no, not only  
15 that. They should have presented his entire  
16 prison history as I presented it this  
17 morning.

18 Q Everything he did in prison, the  
19 shank, all that information should have gone  
20 in front of a jury?

21 A All of that information should  
22 have gone in front of the jury and put in  
23 the context of what else happened to him in



1 prison and what else he did and how his  
2 record as a model prisoner stood up against  
3 other prisoners. As your own expert said, a  
4 model prisoner.

5 Q Now, I'm confused about this  
6 institutionalization, and we're going to get  
7 to that in a second. But I want to go back  
8 to this -- what we're talking about right  
9 now.

10 You believe that if all of that  
11 information had gone in there, that he would  
12 have been sentenced to life without parole?

13 A I believe that that was an  
14 important thing to present, yes, and it  
15 would have changed the way the jury  
16 understood and analyzed the case as they  
17 understood who Keith Gavin was.

18 Q But you don't know anything about  
19 the jury or the people of Centre, Alabama,  
20 do you?

21 A I don't have any reason to  
22 believe they're any different from jurors  
23 anywhere else. I don't have any reason to

1 believe that.

2 In terms of wanting to know about  
3 the defendant in terms of being responsive  
4 to mitigation -- there's no law in  
5 mitigation which is different for one  
6 jurisdiction in Alabama versus the rest of  
7 the United States.

8 Q But as a psychologist you will  
9 agree that people base their decisions off  
10 of their experiences?

11 A They base their decisions off of  
12 their experiences, but everybody, everybody,  
13 whatever their experiences, everybody is  
14 educable. And if presented in the right way  
15 with the right kind of information, they can  
16 learn and understand things properly. And  
17 that's what this jury was never given an  
18 opportunity to do.

19 Q But it could have been that the  
20 defense attorney decided not to present it?

21 A I don't know what the defense  
22 attorney decided. I never had a  
23 conversation with him. It appears to me --

1 it appears to me that he didn't have  
2 sufficient information upon which to make  
3 that decision.

4 Q But you never went to their  
5 office and looked at their files?

6 A I never even knew where their  
7 office was because they never contacted me.

8 Q So, you think every defense --  
9 capital defense attorney should hire you if  
10 there's been a defendant who's been  
11 incarcerated prior to committing a crime?

12 A No. I do think they need to get  
13 their prison records well in advance of  
14 doing the trial. That's true for any  
15 defense attorney. That's in the  
16 ABA standards.

17 Q And you don't know what was at  
18 that office?

19 MR. MARSHALL: Do you have a good  
20 ground to ask that question? Because we all  
21 know, yourself included, Pamela, what was in  
22 the defense counsel's file.

23 MS. CASEY: I'm asking him if he

1 knows. Even I know --

2 MR. MARSHALL: I'm asking you if  
3 you have good grounds to ask the question  
4 that suggests that Mr. Smith had the --

5 MS. CASEY: Are you making an  
6 objection on the record?

7 MR. MARSHALL: I am.

8 MS. CASEY: State the rule.

9 MR. MARSHALL: The rule is in  
10 every jurisdiction that as a matter of  
11 professional courtesy an examiner --

12 MS. CASEY: I'm waiting on the  
13 rule.

14 MR. MARSHALL: I don't know the  
15 number of the rule, but I know this to be  
16 the case. That an examiner has to have good  
17 grounds to ask a question.

18 The question that Ms. Casey is  
19 asking implies that Mr. Smith had the prison  
20 records when in point of fact we know that  
21 he did not until after the jury had  
22 sentenced -- made its recommendation.

23 Q (BY MS. CASEY:) Do you know what

1 was in the file that defense counsel had?

2 A I didn't see the file. Obviously  
3 I don't know what was in it. I only know  
4 what Ms. Penland represented to me.

5 Q Do you know whether or not  
6 Mr. Gavin was cooperating with his attorney  
7 at the time of his sentencing?

8 A I don't know.

9 Q And isn't it true that if a  
10 defendant refuses to cooperate with his  
11 attorney it makes it much more difficult to  
12 present mitigation evidence?

13 A It might, but not necessarily.

14 Q And if he refuses to allow family  
15 or anyone related to him or connected to him  
16 to talk to his defense attorney that it  
17 would be difficult to have a mitigation --  
18 to create a mitigation report?

19 A Difficult, but not  
20 insurmountable. And it's no excuse for not  
21 doing it, absolutely not. And you encounter  
22 this often in cases and you have -- and you  
23 have to compile the mitigation anyway. And

1 often times you have to spend a lot of time  
2 with the client explaining what mitigation  
3 is and explaining to them why it's  
4 necessary. And eventually if you spend the  
5 right amount of time with them, 99 percent  
6 of them actually begin to understand why  
7 it's needed and begin to cooperate.

8 Q You don't know how much time was  
9 spent with him trying to convince him to  
10 cooperate?

11 A I don't know.

12 Q Are you aware that Mr. Gavin's  
13 mother refused to talk to defense counsel or  
14 to Ms. Penland?

15 A The same problem, the same  
16 solution. You have to spend time with  
17 people explaining why it is you need this  
18 information. And even if the mother doesn't  
19 cooperate and the defendant doesn't  
20 cooperate, there are lots of people from  
21 whom mitigation evidence can be acquired.

22 Q You're not a mitigation  
23 specialist, are you?

1 A No, but I write about and analyze  
2 mitigation and present it all the time in  
3 court.

4 Q But you will agree that it's  
5 difficult when a defendant refuses to  
6 cooperate with his attorney?

7 A It's more difficult, but it's by  
8 no means an insurmountable problem.

9 Q So, you agree that you forgot  
10 about some of this case of what happened  
11 back in 1999?

12 A No, I don't agree at all. I  
13 didn't know that that phone call was related  
14 to the Gavin case. That's how -- that's how  
15 brief the conversation was. So, it  
16 wasn't -- I didn't even know the phone calls  
17 were connected. That's I guess a better way  
18 to describe it.

19 Q I believe on direct you indicated  
20 that you had forgotten and it wasn't until  
21 you had seen the copies of the e-mails.

22 A Well, I should have said -- I  
23 don't know what I said on direct, but I

1 didn't realize that the two things were  
2 connected, that that earlier conversation  
3 that I had with Ms. Penland had anything to  
4 do with the Gavin case.

5 Q So, you forgot aspects of this  
6 case back in 1999?

7 A Well, it assumes that I even knew  
8 in April that this was connected to that  
9 case, and I'm not even sure I did know in  
10 April of 1999 that it had anything to do  
11 with the Gavin case. So, it's not even --  
12 it's not a matter of so much forgetting.  
13 It's a matter of not connecting the two  
14 conversations.

15 Q And it could be possible that  
16 there might be other things out there you  
17 haven't connected?

18 A Yeah, it could be. I don't --  
19 there's no record of anything else. And you  
20 know, it's fairly clear that -- from my  
21 conversation with Ms. Penland in October  
22 that nothing had transpired between us  
23 between April and October.



1 Q But you could have forgotten it?

2 A You know, I don't know how to  
3 answer that. I don't have any reason to  
4 believe that I have forgotten anything with  
5 respect to it. The next time she contacted  
6 me on anything about anything was in October  
7 of 1999.

8 Q You interviewed Mr. Gavin in  
9 2007, right?

10 A Yes.

11 Q When did this crime occur?

12 A The crime occurred in I believe  
13 1997.

14 Q All right. Did you interview  
15 Mr. Gavin in 1997?

16 A Of course not.

17 Q '98?

18 A No.

19 Q '99?

20 A No. 2007.

21 Q So, it was some 10 years after  
22 the crime occurred?

23 A Correct.